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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1943

No. 23

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE MISSOURI-KANSAS-TEXAS RAILROAD, AN UNINCORPORATED ASSOCIATION, PETITIONER,

vs.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 8, 1943.

CERTIORARI GRANTED MAY 24, 1943.

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CAPTION.

BE IT REMEMBERED, that at a regular term of the United States District Court in and for the Northern District of Texas, begun and holden at Dallas, Texas, on the 5th day of May, A. D. 1941, and which said term adjourned on the 9th day of July, A. D. 1941, the Honorable Wm. H. Atwell, United States District Judge for the Northern District of Texas, presiding, the following proceedings were had and the following cause came on for trial and was tried, to-wit:

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE MISSOURI-KANSAS-TEXAS RAILROAD, AN UNINCORPORATED ASSOCIATION,

Plaintiff,

Versus No. 449-Civil.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, A CORPORATION, AND MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS, A CORPORATION,

Defendants,

GENERAL GRIEVANCE COMMITTEE OF THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN,

Third Party Defendant.

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2 PLAINTIFF'S COMPLAINT.

Filed April 10, 1941.

1. The action arises under a law regulating commerce (28 U. S. C. Sec. 41, eighth), to-wit, the Railway Labor

Act (45 U. S. C. sec. 151, et seq.), and seeks a declaration of the rights and other legal relations of the parties hereto (28 U. S. C. Sec. 400) and further relief, as hereinafter more fully appears.

2. Defendant Missouri-Kansas-Texas Railroad Company is incorporated under the laws of Missouri, and defendant Missouri-Kansas-Texas Railroad Company of Texas is incorporated under the laws of Texas. Defendants are, and at all times herein mentioned have been, carriers by railroad subject to the Interstate Commerce Act, and within the meaning and scope, and subject to the provisions, of said Railway Labor Act. Said defendants are closely affiliated in ownership and management, and together operate a railroad system in and among the states of Missouri, Kansas, Oklahoma and Texas commonly known to the general public, and referred to and designated by defendants, as Missouri-Kansas-Texas Lines or Katy Lines.

3. There is, and continuously for many years prior to the filing of this complaint there has been, a craft or class of locomotive engineers in the service of defendants as such carriers on and throughout the aforesaid lines of railroad, which craft or class ever since the enactment of said Railway Labor Act has been recognized by defendants as a craft or class of employees of defendants for all the purposes of said Act. A majority of all of said locomotive engineers comprising said craft or class on and throughout said Missouri-Kansas-Texas Lines are members of the Grand International Brotherhood of Locomotive Engineers, a voluntary unincorporated association composed of approximately 60,000 persons throughout the United States and Canada who follow the occupation of locomotive engineer on the various railroads of the United States and Canada. Plaintiff is a volun-

ary unincorporated association organized pursuant to nd under the authority of the constitution and laws f said Grand International Brotherhood of Locomotive Engineers.

4. Plaintiff is, and ever since the enactment of said Railway Labor Act has been, the sole designated representative of said craft or class of locomotive engineers under, and for all purposes of, said Railway Labor Act, including collective bargaining, and making and maintaining agreements with defendants concerning rates of pay, rules, and working conditions on said Missouri-Kansas-Texas Lines. For many years before the enactment of the Railway Labor Act, and ever since, there have been agreements negotiated from time to time between plaintiff and defendants concerning rates of pay, rules and working conditions of said craft. The last of said agreements was made in writing effective October 1, 1918, and has been continuously in effect ever since, with occasional amendments and additions.

5. *Article 38* of the present agreement between plaintiff and defendants is as follows:

"We affirm the right to make and interpret contracts, rules, rates and working agreements for locomotive engineers shall be vested in the regularly constituted committee of the Brotherhood of Locomotive Engineers." *Article 66* of said agreement is as follows:

"Any ruling made with reference to any of the Articles enumerated herein will be made only by the officials signing this Agreement and will be made in writing and General Chairman of the Engineers' Committee will be furnished copy of said ruling but said ruling shall not be made effective until agreed to between the parties herein mentioned."

6. There is, and at all times herein mentioned has been, a separate craft or class of locomotive firemen in the service of defendants on and throughout said Missouri-Kansas-Texas Lines, the designated representative of which craft or class of firemen, for the purposes of said Railway Labor Act, is an unincorporated association (hereinafter for brevity called "said Firemen's Committee") having the common name of General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen. Said Firemen's Committee has never been the designated representative of said craft of engineers.

7. Defendants obtain most of the members of their craft of locomotive engineers from the competent members of said craft of locomotive firemen in the order of their seniority of service. The numbers of the respective crafts of engineers and firemen fluctuate from time to time in correspondence with the volume of transportation business of defendants. As said volume increases, senior firemen are called to service as engineers; as it decreases, junior engineers are demoted to firemen. When employees are serving defendants as engineers, plaintiff is their designated representative under and for the purpose of the Railway Labor Act; when serving defendants as firemen said Firemen's Committee is their representative. Said craft of engineers represented by plaintiff is the higher paid and older in point of service of the two crafts, as aforesaid. Both crafts are paid for service on the basis of hours served or miles run.

8. Notwithstanding the matters hereinbefore set forth, and in violation of (a) said Railway Labor Act, (b) said agreement effective October 1, 1918, and subsequent changes therein or additions thereto (c) the rights of plaintiff as sole designated representative of said craft

of locomotive engineers, and (d) the rights of the members of said craft of locomotive engineers on said Missouri-Kansas-Texas Lines of defendants, said defendants and said Firemen's Committee, and the aforesaid Brotherhood of Locomotive Firemen & Enginemen, through the officers of said Committee and Brotherhood, by an agreement dated December 12, 1940, have agreed in writing concerning rules and working conditions governing said craft of engineers in their service as locomotive engineers, as follows, to-wit:

"Mediation Agreement
Brotherhood of Locomotive Firemen and Enginemen
and
Missouri-Kansas-Texas Lines.

In settlement of differences between the employees of the Missouri-Kansas-Texas Lines, represented by the Brotherhood of Locomotive Firemen and Enginemen, and the carrier above referred to, it is mutually agreed that the questions submitted to mediation by the organization under date of August 7, 1940, National Mediation Board Case A-838, are hereby disposed of as follows.

(1) Effective February 1, 1941, it is agreed when necessary to call a demoted engineer who is back firing to perform service as engineer, the senior available demoted engineer will be called.

(2) Effective February 1, 1941, the carrier will apply the rules in the schedules governing the regulation of working lists in the same manner as contemplated by the letters of agreement dated March 28, 1923 and March 29, 1923, copies of which are attached hereto. It is understood this method of adjusting the lists may be modi-

fied by mutual agreement between the carrier and the interested organizations.

(3) The question raised in Item 1 of the application for mediation is disposed of by exchange of letters between the parties and the Board.

Signed at Washington, D. C., this twelfth day of December, 1940.

For the Carrier:
(Sgd.) F. W. GRACE,
Vice President and General Manager, Missouri-Kansas-Texas Lines.
For the Employees:
(Sgd.) C. J. GOFF,
Asst. President, B. of L. F. & E.
(Sgd.) H. M. VAN SANT,
Vice President, B. of L. F. & E.
(Sgd.) CHAS. McKEMY,
General Chairman, B. of L. F. & E.
(Mediation Board Seal)
(Sgd.) GEORGE A. COOK,
Chairman, National Mediation Board.
(Sgd.) OTTO S. BEYER,
Member, National Mediation Board.

9. An actual controversy exists between plaintiff and defendants with respect to the rights and other legal relations of plaintiff in the premises. It is the asser-

tion and contention of plaintiff that the provisions quoted from the aforesaid agreement dated December 12, 1940, in paragraph 8, supra, and the interpretation and application thereof, violate and interfere with the right and duty of plaintiff to act as the sole designated representative of said craft of engineers, with the right and duty of plaintiff to make, maintain and interpret agreements concerning rates of pay, rules and working conditions for said craft or engineers, under and for the purposes of said Railway Labor Act and the aforementioned engineers' agreement by and between plaintiff and defendants; and that by said agreement quoted in paragraph 8, supra, defendants have bargained collectively with said Firemen's Committee and said Brotherhood of Locomotive Firemen and Enginemen with respect to rules and working conditions for said craft of engineers in their service as locomotive engineers. They do so violate and interfere. Defendants contend that they do not.

Wherefore, plaintiff demands that the Court adjudge and declare the rights and legal relations of plaintiff and defendants in the premises, with such further relief in the decree as may be proper.

(Signed) J. W. MADDEN, JR.,

Address:
2017 Republic Bank Bldg.,
Dallas, Texas.

(Signed) C. E. WEISELL,
Attorneys for Plaintiff.

Engineers Building,
Cleveland, Ohio.

9 MOTION TO MAKE GENERAL GRIEVANCE COMMITTEE OF THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, THIRD PARTY DEFENDANT.

Filed May 1st, 1941.

Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, defendants hereinafter referred to as Railroads, move for leave to make the General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen third party defendant herein and for service of a summons and a copy of plaintiff's complaint upon them and show to the Court:

1.

The said General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen has not heretofore been made a party to this action, but the cause of action asserted is such that its interests might be adversely affected by any valid judgment rendered herein, in that:

This is a suit by the plaintiff for a judgment declaring void certain parts of a contract between these defendants and such third party defendant, for which reason the latter is an indispensable party hereto and its presence is a prerequisite to the exercise of the jurisdiction of this Court over the controversy involved herein.

2.

The said third party defendant is an involuntary, unincorporated association, having as its chairman and

agent upon whom service may be had, J. H. Denson, a resident citizen of Dallas County, Texas.

(Signed) C. C. HUFF,
G. H. PENLAND,
TOUCHSTONE, WIGHT,
GORMLEY, TOUCHSTONE,
By LUCIAN TOUCHSTONE.

1108 Magnolia Building,
Dallas, Texas.

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11 ORDER GRANTING MOTION OF DEFENDANTS TO MAKE GENERAL GRIEVANCE COMMITTEE OF THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN THIRD PARTY DEFENDANT.

Filed May 1, 1941.

On motion of the defendants, Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, on this 30th day of April, 1941, leave is granted to make the General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen a third party defendant and to have summons and service thereof upon it to appear and answer herein. It is directed that said summons shall be accompanied by a copy of plaintiff's complaint, together with a copy of the aforesaid motion and of this order.

(Signed) WM. H. ATWELL,
U. S. Dist. Judge.

Entered on the 30 day of April, 1941, in Vol. 32, page 349 of the Civil Minutes.

12 ANSWER AND CROSS COMPLAINT OF DEFENDANTS.

Filed May 1, 1941.

Now come the defendants in the above numbered and entitled cause, and for answer to the complaint filed herein respectfully show to the Court as follows:

1.

These defendants admit the allegations contained in Paragraphs 1 and 2 of said complaint.

2.

These defendants admit the allegations contained in Paragraph 3 of said complaint, except that portion thereof wherein it is alleged that a majority of all of said Locomotive Engineers comprising said craft or class on the lines of defendants are members of the Grand International Brotherhood of Locomotive Engineers. As to this allegation, the defendants say that they are without sufficient information to either admit or deny the same.

3.

These defendants admit the allegations contained in Paragraph 4 of said complaint, except as may be hereinafter more specifically alleged.

4.

These defendants admit the allegations contained in Paragraph 5 and 6 of said complaint.

5.

These defendants admit the allegations contained in the first and last sentences of Paragraph 7 of said complaint, but deny the remaining allegations in said paragraph.

6.

With reference to Paragraph 8, these defendants admit the making of the agreement described in said paragraph, but deny that same was made in Violation of:

(a) Said Railway Labor Act

(b) Said agreement effective October 1, 1918, and subsequent changes therein and additions thereto,

(c) The rights of plaintiff as sole designated representative of said craft of said locomotive engineers, or

(d) The rights of the members of said craft of said locomotive engineers.

7.

These defendants admit the allegations contained in Paragraph 9 of said complaint, save and except the sentence: "they do so violate and interfere," which allegation is denied.

8.

These defendants would respectfully show to the Court that the conditions described in plaintiff's petition have not only given rise to the controversy described in Para-

graph 9 thereof, but for many years have been fruitful of controversy; that the fact that there exists a class of employees of these defendants serving both as firemen and engineers has been the basis of claims on the part of the plaintiff and of the General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen as to their respective jurisdiction to negotiate with the defendants relative to wages and working conditions of the men working interchangeably in the two crafts; that formerly, under the terms of what is known as the Chicago Joint Working Agreement made between the representatives of the two crafts, the solution of the controversies arising, such as those herein involved, was committed to and determined by representatives of such crafts without the participation of defendants therein; that such agreement was terminated by said crafts many years ago, since which time controversies have frequently arisen as to the particular craft with which defendants should negotiate with respect to the service to be performed by those employees working interchangeably in said crafts.

9.

Following the termination of said Chicago Joint Working Agreement, each of said crafts contended that it was within its province to represent those of its members engaged in this interchangeable service in negotiating rules covering working conditions of those engaged therein. Thereupon, these defendants sought to compose the differences between such organizations and to obtain a joint agreement with the two crafts covering the rules governing such working conditions. The defendants, being unsuccessful in these attempts and being under a duty to render an efficient common carrier service to the public, issued instructions to their officials charged with

the duty of providing such service as to the manner of selecting the members of the two crafts for the performance of this interchangeable service, and in connection therewith the defendants followed, to the extent that it was possible for them to do so, the established rules, regulations and agreements in the selection of the members of the two crafts to engage in this service. That in the operation and administration of such practices, rules and regulations protests would be presented to defendants by one or the other of said crafts with respect thereto. That these defendants continued the operation of their railroads under said rules, regulations and practices so established by them for the performance of this service until on or about the 12th day of December, 1940, the date of the agreement referred to in the petition of the plaintiff filed herein.

10.

That on or about the first day of December, 1937, the General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen complained to defendants of an agreement theretofore entered into between the defendants and the plaintiff herein dated on or about the 14th day of May, 1929, covering the filling of vacancies as engineers on what is known as the "Pool or Chain Gang Board" at Smithville, Texas. In this connection, defendants allege that a "Pool or Chain Gang Board", as that term is used in railroad parlance, is a specific group of members of a craft assigned to irregular service and who are called to such service in the order of their rotation on such board. That these defendants rejected the complaint of said General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen and adhered to its said agreement and to its rules, regulations and practices governing such service theretofore

established, and advised the said General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen that they would do so.

11.

Thereafter, on or about June 1st, 1938, the said General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen complained to defendants with respect to another regulation theretofore established by them pertaining to the manner in which demoted engineers were called for service as engineers at away from home terminal points.

(In this connection these defendants would show the Court that they have their lines of railway divided or segmented into what is known as districts or divisions, and within each such district or division a point is designated as the home terminal point and the crews engaged in the operation of their trains, including the members of the two crafts referred to, are assigned to some one of such districts or divisions and members of each of said crafts so assigned hold seniority rights only within the district or division to which such employee is assigned. That by the term "away from home terminal point" is meant a point other than the terminal designated as the seniority terminal point.)

That defendants rejected this complaint and continued to adhere to the practices theretofore established by them regulating such service.

12.

The continued insistence by the said General Grievance Committee of the Brotherhood of Locomotive Firemen

and Enginemen upon modifications in the practices, rules and regulations established by the defendants governing such services prompted these defendants to undertake to invoke the aid of the National Mediation Board, created under the provisions of the Railway Labor Act, to compose the differences. The National Mediation Board declined to take jurisdiction of the controversy. Thereupon, the said General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen presented a demand upon these defendants for the establishment of new rules and regulations, under the terms of which the members of its craft engaged in or subject to such interchangeable service would be guaranteed under certain conditions set forth in said demand their earnings as firemen while employed as engineers. This demand defendants likewise declined, and thereupon the General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen invoked the aid of the National Mediation Board to use its good offices in bringing about an agreement with respect to the matters set forth in said demand upon defendants.

13.

The National Mediation Board was unsuccessful in its efforts to compose the differences of the parties to such mediation, and thereupon the said committee called upon its memebrship for a strike vote to determine whether the members of said craft would engage in a strike on account of the refusal of defendants to acquiesce in the demands made upon them by said committee. Following the taking of said strike vote the announcement was made that such strike had been authorized, and thereupon the National Mediation Board called upon the parties to again confer with it in an effort to compose their differences and avert such strike. Pursuant to

such request such a conference was held and out of such conference the agreement referred to in plaintiff's petition was entered into.

14.

Thereupon, defendants served notice upon plaintiff that they desired to cancel the provisions in the agreements entered into with it which were in conflict with the provisions of the agreement entered into between defendants and said Brotherhood of Locomotive Firemen and Enginemen, which request the plaintiff declined. Conferences between said plaintiff and defendants followed without reaching a satisfactory agreement with respect to the matters in controversy. Thereupon, plaintiff invoked the aid of the National Mediation Board to compose such differences, and, following the receipt of notice from the National Mediation Board of the termination of its efforts to mediate said controversy, defendants served notice of cancellation upon plaintiff of the provisions of the agreements between them which were in conflict with the provisions of the agreement set forth in the complaint filed herein. Such termination became effective on or about April 13th, 1941.

15.

That it has at all times been the position of defendants that inasmuch as the services, the performance of which gave rise to these controversies, were of necessity required to be performed by members of both of said crafts, agreements should be entered into between said crafts covering the rendition of such services, and these defendants have repeatedly used their best efforts to bring about an agreement between said two crafts to that end. That these defendants have been at all times and are now willing to enter into a joint agreement with

said crafts covering the manner of the rendition of such service, provided that defendants shall not, under the terms of any such agreement, be required to do other than pay the members of the particular craft rendering such service for the service so rendered. That the continued existence of these controversies has and will continue to be a source of trouble, confusion and expense to defendants, and has and will continue to materially hamper defendants in the performance of their common carrier duties to the public, and defendants therefore join in the prayer of the plaintiff that the Court determine for the guidance of all parties the respective rights of the parties with respect to contracting for and performance of such services.

16.

These defendants further allege and show the Court that the Brotherhood of Locomotive Firemen and Enginemen is an indispensable, necessary and proper party to this suit in that plaintiff seeks, by its petition herein, to have this Court determine the validity of a contract entered into between said Brotherhood of Locomotive Firemen and Enginemen and these defendants, and the interests of said Brotherhood of Locomotive Firemen and Enginemen may be adversely affected by the decree entered herein.

Wherefore, these defendants pray that said Brotherhood of Locomotive Firemen and Enginemen be made a third party defendant, and for service of summons and a copy of plaintiff's complaint and of this answer upon said Brotherhood of Locomotive Firemen and Enginemen, and for such purpose shows that the said third party defendant is a voluntary unincorporated association, having as its local chairman and agent upon whom

service may be had J. H. Denton, a resident citizen of Dallas County, Texas, and further prays, as heretofore prayed, that upon hearing hereof this Court determine for the guidance of all parties the respective rights of the parties with respect to contracting for and performance of such services, and for such other and further orders as the Court may think necessary and proper in the premises.

(Signed) C. C. HUFF,
(Charles C. Huff)
G. H. PENLAND,
(G. H. Penland)
TOUCHSTONE, WIGHT,
GORMLEY & TOUCHSTONE,
By LUCIAN TOUCHSTONE.

1108 Magnolia Building,
Dallas, Texas.

A copy of this answer has been, this the 30th day of April, 1941, served upon the plaintiff by depositing a true and correct copy thereof in the United States mails addressed to J. W. Madden, Jr., attorney of record for the plaintiff, at 2017 Republic Bank Building, Dallas, Texas.

(Signed) LUCIAN TOUCHSTONE.

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22 STIPULATION.

Filed May 22, 1941.

The parties, plaintiff, defendants, and third-party defendant, to the cause styled, numbered and pending as above, hereby stipulate, subject to order of the Court,

that the time for filing further pleadings is hereby enlarged as follows:

Plaintiff may file an amendment to its complaint on or before May 22, 1941; and third-party defendant may file its answer on or before May 31, 1941, and without prejudice to the rights of defendants to amend.

(Signed) J. W. MADDEN, JR.,

2017 Republic Bank Building,
Dallas.

(Signed) C. E. WEISELL,
Attorneys for plaintiff.

Engineers Building,
Cleveland, Ohio.

(Signed) C. C. HUFF,
G. H. PENLAND,
TOUCHSTONE, WIGHT,
GORMLEY & TOUCHSTONE,
By LUCIAN TOUCHSTONE,
Attorneys for Defendants.

1108 Magnolia Building,
Dallas.

(Signed) HAROLD C. HEISS,

906 Keith Building,
Cleveland, Ohio.

(Signed) T. D. GRESHAM,
Attorneys for Third-Party Defendant.

921 Kirby Building,
Dallas.

23 ORDER EXTENDING TIME TO PLEAD.

Filed May 22, 1941.

On motion of Third-Party Defendant, all parties consenting thereto, it is

Ordered, that the time within which Plaintiff may amend its complaint is hereby extended to and including the 22nd day of May, 1941; that the time for Third-Party Defendant to file its answer is hereby extended to and including the 31st day of May, 1941; all of which is without prejudice to the rights of Defendants to amend.

(Signed) WM. H. ATWELL,
United States District Judge.

Dated May 22, 1941.

Entered on the 22nd day of May, A. D., 1941, in Volume 32, page 434, of the Civil Minutes.

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24 PLAINTIFF'S FIRST AMENDED COMPLAINT.

Filed May 16, 1941.

To the Honorable Judge of Said Court:

Now comes the General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad, an unincorporated association, plaintiff in the above entitled and numbered cause, with leave of Court first had and obtained, and files this, Plaintiff's First Amended Complaint, in lieu of Plaintiff's Complaint for Declaratory Relief heretofore filed herein, and alleges:

1. That this action arises under a law regulating commerce (28 U. S. C. Sec. 41, Eighth), to-wit, the Railway Labor Act (45 U. S. C. Sec. 151, et seq.), and plaintiff seeks a declaration of the rights and other legal relations of the parties hereto (28 U. S. C. Sec. 400) and further relief, as hereinafter more fully appears.

2. That defendant Missouri-Kansas-Texas Railroad Company is a corporation, duly incorporated, organized and now existing under and by virtue of the laws of the State of Missouri, and the defendant Missouri-Kansas-Texas Railroad Company of Texas is a corporation, duly incorporated, organized and now existing under and by virtue of the laws of the State of Texas. That defendants are, and at all times herein mentioned have been, common-carriers engaged in the transportation of passengers and property by railroad among the several States of Missouri, Kansas, Oklahoma, and Texas, and are carriers by railroad subject to the Interstate Commerce Act and within the meaning and scope and subject to the provisions of said Railway Labor Act. That said defendants are closely affiliated in ownership and management, and together operate a railroad system in and among the said States of Missouri, Kansas, Oklahoma, and Texas, commonly known to the general public and referred to and designated by defendants as Missouri-Kansas-Texas Lines, or Katy Lines.

3. That there is, and continuously for many years prior to the filing of this complaint there has been, a craft or class of locomotive engineers in the service of defendants as such carriers on and throughout the aforesaid lines of railroad, which craft or class ever since the enactment of said Railway Labor Act has been recognized by defendants as a craft or class of employees of defendants for all the purposes of said Act. That

a majority of all of said locomotive engineers comprising said craft or class on and throughout said Missouri-Kansas-Texas Lines are members of the Grand International Brotherhood of Locomotive Engineers, a voluntary unincorporated association composed of approximately 60,000 persons throughout the United States and Canada who follow the occupation of locomotive engineer on the various railroads of the United States and Canada. That plaintiff is a voluntary unincorporated association organized pursuant to and under the authority of the constitution and laws of said Grand International Brotherhood of Locomotive Engineers.

40. That plaintiff is, and ever since the enactment of said Railway Labor Act has been, the sole designated representative of said craft or class of locomotive engineers under, and for all purposes of, said Railway Labor Act, including collective bargaining, and making and maintaining agreements with defendants concerning rates of pay, rules, and working conditions on said Missouri-Kansas-Texas Lines. That for many years before the enactment of the Railway Labor Act, and ever since, there have been agreements negotiated from time to time between plaintiff and defendants concerning rates of pay, rules and working conditions of said craft. That the last of said written agreements (which is commonly referred to as "engineers' schedule") was made and entered into by and between the defendants and the Brotherhood of Locomotive Engineers, acting by and through the plaintiff, and became effective October 1, 1918, to which reference is here made for all purposes. That said agreement has been continuously in effect ever since the said 1st day of October, 1918, with occasional amendments, additions and interpretations, is now valid and binding upon the parties thereto, and is in full force and effect.

5. That Article 38 of said agreement of October 1, 1918, which is now in full force and effect, is as follows:

"We affirm the right to make and interpret contracts, rules, rates and working agreements for locomotive engineers shall be vested in the regularly constituted committees of the Brotherhood of Locomotive Engineers."

That Article 66 of said agreement of October 1, 1918 which is now in full force and effect, is as follows:

"Any ruling made with reference to any of the Articles enumerated herein will be made only by the officials signing this Agreement and will be made in writing and General Chairman of the Engineers' Committee will be furnished copy of said ruling but said ruling shall not be made effective until agreed to between the parties herein mentioned."

That pursuant to the terms and provisions of the said agreement of October 1, 1918, on or about December 14, 1938, the following agreement was entered into between plaintiff and defendants, to-wit:

"Where engineer cannot be secured from extra board in the usual manner and the use of emergency engineer is necessary, the senior demoted engineer (when such is available) the home terminal of whose run or assignment is at the point where the service is required or required to begin will be used."

That pursuant to the terms and provisions of the said agreement of October 1, 1918, on or about May 1, 1939, the following agreement was entered into between plaintiff and defendants, to-wit:

"Question has arisen as to the procedure to be followed under the following circumstances:

"'Fireman on freight run is a demoted engineer. At the away from home terminal engineer on this run is obliged to lay off. The senior demoted engineer available, with home terminal at that point, is junior to the fireman (who is a demoted engineer) who arrives on the run at the away from home terminal point.'

"In providing engineer for the return of this run under circumstances outlined, the fireman (demoted engineer) arriving on the run at point where engineer laid off, would be used as engineer on the return trip; and fireman provided in the usual way to relieve the men used as engineer."

That pursuant to the terms and conditions of agreement of October 1, 1918, with reference to conditions existing in Smithville, Texas, an agreement was made and entered into between plaintiff and defendants, which was evidenced by a letter written by W. E. Williams, Manager of the Personnel Department of Defendants, to D. C. Dobbins, Superintendent, dated May 14, 1929, as follows:

"Referring to your 306 of April 20th, regarding the handling of engineers.

"There are no objections to your request that where there are no extra engineers available and there are pool crews on the pool board, that instead of using emergency engineers, the regular pool engineers will be used by setting them up to the next turn ahead, etc.

"Emergency vacancies of this kind in pool through freight service should be filled by engineers assigned to this service rather than to use emergency men. This not to apply to vacancies in any other class of service,

and should be confined to emergency cases and all other vacancies regulated by not permitting engineers to lay off except where there are extra engineers to fill their places, if there is a sufficient number of engineers assigned to properly take care of the extra work. If a sufficient number is not assigned, assignment should be made as soon as it is known that there are not sufficient number assigned, keeping in mind the mileage limitations of the agreement."

That on or about the 15th day of February, 1938, the defendants undertook to change the method of handling engineers at Smithville, as set forth in the above and foregoing agreement, and, after protest by the plaintiff, the defendants re-affirmed said agreement by letter dated April 21, 1938, executed by F. W. Grace, Vice President and General Manager of defendants, addressed to E. O. Johnson, General Chairman of plaintiff, as follows:

"Referring to your letter of February 19, 1938, concerning the handling of pool board engineers at Smithville.

"We have restored the former arrangement in effect at Smithville in accordance with the general terms of the engineers' schedule, and the interpretations placed thereon by Mr. Williams in 1929."

That all of the above and foregoing agreements were in full force and effect on December 12, 1940, on which date the Mediation Agreement hereinafter referred to was entered into.

6. That there is, and at all times herein mentioned has been a separate craft or class of locomotive firemen in the service of defendants on and throughout said

Missouri-Kansas-Texas Lines, the designated representative of which craft or class of firemen, for the purposes of said Railway Labor Act, is an unincorporated association (hereinafter for brevity called "said Firemen's Committee") having the common name of General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen. That said Firemen's Committee is not now and has never been the designated representative of said craft of engineers.

7. That defendants obtain most of the members of their craft of locomotive engineers from the competent members of said craft of locomotive firemen in the order of their seniority of service. That the numbers of the respective crafts of engineers and firemen fluctuate from time to time in correspondence with the volume of transportation business of defendants. That as said volume increases, senior firemen are called to service as engineers; as it decreases, junior engineers are demoted to firemen. That when employees are serving defendants as engineers, plaintiff is their designated representative under and for the purposes of the Railway Labor Act; when serving defendants as firemen said Firemen's Committee is their representative. That said craft of engineers represented by plaintiff is the higher paid and older in point of service of the two crafts, as aforesaid. That both crafts are paid for service on the basis of hours served or miles run.

8. That notwithstanding the matters hereinbefore set forth, and in violation of (a) said Railway Labor Act, (b) said agreement effective October 1, 1918, and subsequent changes therein, additions thereto, modifications and interpretations thereof, and the other agreements herein set forth, (c) the rights of plaintiff as sole designated representative of said craft of locomotive

engineers, and (d) the rights of the members of said craft of locomotive engineers on said Missouri-Kansas-Texas Lines of defendants, said defendants and said Firemen's Committee, and the aforesaid Brotherhood of Locomotive Firemen & Enginemen, through the officers of said Committee and Brotherhood, by an agreement dated December 12, 1940, herein designated as "Mediation Agreement", have agreed in writing concerning rules and working conditions governing said craft of engineers in their service as locomotive engineers, as follows, to-wit:

"Mediation Agreement
Brotherhood of Locomotive Firemen and Enginemen
and
Missouri-Kansas-Texas Lines.

"In settlement of differences between the employees of the Missouri-Kansas-Texas Lines, represented by the Brotherhood of Locomotive Firemen and Enginemen, and the carrier above referred to, it is mutually agreed that the questions submitted to mediation by the organization under date of August 7, 1940, National Mediation Board Case A-838, are hereby disposed of as follows:

(1) Effective February 1, 1941, it is agreed when necessary to call a demoted engineer who is back firing to perform service as engineer, the senior available demoted engineer will be called.

(2) Effective February 1, 1941, the carrier will apply the rules in the schedules governing the regulation of working lists in the same manner as contemplated by the letters of agreement dated March 28, 1923 and March 29, 1923, copies of which are attached hereto. It is understood this method of adjusting the lists may be modified by mutual agreement between the carrier and the interested organizations.

(3) The question raised in Item 1 of the application for mediation is disposed of by exchange of letters between the parties and the Board.

Signed at Washington, D. C., this twelfth day of December, 1940.

For the Carrier:
(Sgd.) F. W. GRACE,
Vice President and General Manager, Missouri-Kansas-Texas Lines.

For the Employees:
(Sgd.) C. J. GOFF,
Asst. President, B. of L. F & E.
(Sgd.) H. M. VAN SANT,
Vice President, B. of L. F. & E.
(Sgd.) CHAS. McKEMY,
General Chairman, B. of L. F. & E.

(Mediation Board Seal)
(Sgd.) GEORGE A. COOK,
Chairman, National Mediation Board,
(Sgd.) OTTO S. BEYER,
Member, National Mediation Board."

That the letter of March 28, 1923, referred to in paragraph two of said Mediation Agreement is as follows:

"General Grievance Committee
Missouri-Kansas-Texas Railway System.

St. Louis, March 28, 1923.

"Mr. Arthur J. Lovell,
Vice-President, BofLF&E,
Annex Hotel, St. Louis Mo.,
Representing BofLE and BofLF&E.

Mr. G. W. Anderson, Vice-President,
BofRT, Annex Hotel,
St. Louis, Missouri.

Mr. F. H. Nemitz, Vice President,
ORC, Annex Hotel,
St. Louis, Mo.

Gentlemen:

"Acknowledge your letter of March 28th:

"This is to confirm understanding in conference this morning that in the handling of crews Superintendents will be governed by existing rulings and agreements as applied by the committees, except where in conflict with the agreements between the railway and the organizations or with instructions to Superintendents effective as of April 1st, 1923, and, in the event of conflict as above, conference will be had with the General Chairman for the purpose of adopting such rule or agreement as will protect the interests of all concerned.

"From verbal statements made by you I see nothing wrong with the agreements to which you refer or any reason why these cannot be carried out and with the understanding that your Local Chairmen will be instructed to get in touch with the Superintendent, provide him with copy of rulings and agreements, and render assistance in the way of furnishing information as to these outstanding agreements and practices, we do not anticipate any confusion whatever in the carrying out of our notice effective April 1st, 1923.

"Thank you for your assistance and cooperation in this movement.

Yours truly,
(Signed)W. E. WILLIAMS."

That the letter of March 29, 1923, referred to in paragraph two of said Mediation Agreement is as follows:

"General Grievance Committee
Missouri, Kansas, & Texas Railway System.

St. Louis, Missouri, March 29, 1923.

"Mr. W. E. Williams, Manager,
Department of Personnel,
Missouri-Kansas-Texas Railway,
St. Louis, Missouri.

Dear Sir:

"As a matter of record, this will acknowledge receipt of your letter of March 28th, confirming understanding reached during conference this date, respecting the question of the Management effective April 1st, 1923, taking over the handling of assignments of Enginemen, Conductors, Trainmen and Yardmen, in accordance with ex-

isting rules and agreements and rulings made by the General Committees of the four organizations.

Yours truly,

(Sgd.) F. H. NEMITZ,
Vice President, ORC,

(Sgd.) G. W. ANDERSON,
Vice President, Bof RT."

(Sgd.) ARTHUR J. LOVELL,
Vice President-BofLF&E,
Also presenting the BofLE.

That paragraph three of said Mediation Agreement refers to an exchange of letters between the parties, which are as follows:

"Washington, D. C., December 12, 1940.

"Mr. H. M. Van Sant, Vice President,
Brotherhood of Locomotive Firemen and Enginemen,
Mr. Chas. McKemy, General Chairman,
Brotherhood of Locomotive Firemen and Enginemen.
Washington, D. C.

Gentlemen:

"In accordance with understanding reached in conference today, steps will be taken to adjust the complaint with reference to handling of demoted engineers who are back firing at Smithville to conform to Item 1, of the Mediation Agreement, Case A-836, dated today. That is to say, the practice in filling vacancies on engineers' pool board at Smithville will be the same as present practice at other district terminals on the railroad. This will be done as promptly as possible.

"Will you kindly acknowledge your acceptance.

Very truly yours,
(Signed) F. W. GRACE,
Vice President-General Manager, Missouri-Kansas-Texas Lines.

cc: National Mediation Board."

"Washington, D. C., December 12, 1940.

"Mr. F. W. Grace, Vice President and Gen'l Mgr.,
Missouri-Kansas-Texas Lines,
Washington, D. C.

Dear Sir:

"This will acknowledge your letter of even date regarding the complaint with respect to using demoted Engineers and the handling of engineers' pool board at Smithville.

"You have correctly stated the understanding and your assurance that the complaint will be adjusted is accepted.

Yours very truly,
(Sgd.) H. M. VAN SANT,
Vice President, Brotherhood of Locomotive Firemen & Enginemen,
(Sgd.) CHAS. McKEMY,
General Chairman, Brotherhood of Locomotive Firemen and Enginemen.

cc: National Mediation Board".

9. That the said Mediation Agreement is an unlawful interference with the rights of said craft of engineers to negotiate exclusively, through the designated representative of said craft, with respect to rules and working conditions governing said craft, and the right of said craft to have all rules and working conditions governing said craft determined by representatives of its own choice and designation. That on April 13, 1941, by reason of said Mediation Agreement, and following certain procedural steps required by the Railway Labor Act, defendants

have declared canceled the agreements herein set forth of date of May 14, 1929, December 14, 1938, and May 1, 1939, respectively, and have correspondingly changed the rules and working conditions of the said craft of engineers.

10. That an actual controversy exists between plaintiff and defendants with respect to the rights and other legal relations of plaintiff in the premises. That the provisions of the aforesaid Mediation Agreement and the interpretation and application thereof violate and interfere with the right and duty of plaintiff to act as the sole designated representative of said craft of engineers, with the right and duty of plaintiff to make, maintain and interpret agreements concerning rates of pay, rules and working conditions for said craft of engineers under and for the purposes of the said Railway Labor Act and the aforementioned agreement of date of October 1, 1918, as amended, modified and interpreted, and the other agreements herein set forth, and with existing rules and working conditions of said craft of engineers entered into pursuant to the said agreement and now in effect. That by said Mediation Agreement, defendants have bargained collectively with said Firemen's Committee and said Brotherhood of Locomotive Firemen and Enginemen with respect to rules and working conditions of said craft of engineers in their service as locomotive engineers, and defendants have carried into effect said Mediation Agreement, changed existing agreements between plaintiff and defendants, and changed rules and working conditions of said craft of engineers.

Wherefore, plaintiff demands that the Court adjudge and declare that plaintiff is the sole representative of said craft of engineers, with exclusive rights to negotiate, bargain and agree collectively with the defendants as to

pay, rules and working conditions of locomotive engineers; that the said contract of October 1, 1918, as amended, modified and interpreted, and the other agreements herein set forth, are valid and in full force and effect; that the said Mediation agreement of date of December 12, 1940, is null and void and of no force and effect; and that the Court adjudge and declare all other rights and legal relations of plaintiff and defendants in the premises, with such further relief in the decree as may be proper.

(Signed) J. W. MADDEN, JR.,

2017 Republic Bank Building,
Dallas, Texas.

(Signed) C. E. WEISELL,
Attorneys for Plaintiff.

Engineers Building,
Cleveland, Ohio.

40 WAIVER OF SERVICE OF PLAINTIFF'S FIRST AMENDED COMPLAINT.

Filed May 16, 1941.

The defendants and the third party defendant, by and through their respective attorneys, hereby acknowledge that they have received a copy of plaintiff's first amended complaint, and waive service thereon.

Dated this 16th day of May, 1941.

(Signed) C. C. HUFF,
G. H. PENLAND,
TOUCHSTONE, WIGHT,
GORMLEY & TOUCHSTONE,
By LUCIAN TOUCHSTONE,
Attorneys for Defendants.

1108 Magnolia Building,
Dallas.

(Signed) HAROLD C. HEISS,

906 Keith Building,
Cleveland, Ohio.

(Signed) T. D. GRESHAM,
Attorneys for Third Party Defendant.

921 Kirby Building,
Dallas.

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41 STIPULATION.

Filed May 27, 1941.

The parties, plaintiff, defendants, and third-party defendant, to the cause styled, numbered and pending as

above, hereby stipulate, subject to order of the Court, that the time for filing further pleadings is hereby enlarged as follows:

Defendants may file an amendment to their answer on or before June 7, 1941.

(Signed) J. W. MADDEN, JR.,

2017 Republic Bank Building,
Dallas, Texas.

(Signed) C. E. WEISELL,
Attorneys for Plaintiff.

Engineers Building,
Cleveland, Ohio.

(Signed) C. C. HUFF,
G. H. PENLAND,
TOUCHSTONE, WIGHT,
GORMLEY & TOUCHSTONE,
By LUCIAN TOUCHSTONE
Attorneys for Defendants.

1108 Magnolia Building.

(Signed) T. D. GRESHAM,
Attorneys for Third-Party Defendant.

921 Kirby Building,
Dallas, Texas.

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42 ORDER.

Filed May 27, 1941.

On the 27th day of May, 1941, came on to be heard written stipulation of all the parties, agreeing that the

time within which the defendants may file an amendment to their answer be extended until June 7, 1941.

It is accordingly Ordered that the time for filing an amendment to their answer by the defendants be extended until June 7, 1941.

(Signed) WM. H. ATWELL,
U. S. Dist. Judge.

Entered on the 27th day of May, A. D. 1941, in Volume 32, page 443, of the Civil Minutes.

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43 ANSWER OF THIRD PARTY DEFENDANT.

Filed May 31, 1941.

General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen, Third-Party Defendant in the cause styled, numbered and pending as above, for answer to Plaintiff's First amended Complaint admits, denies and avers as follows:

1. Denies that this action arises under a law regulating commerce (28 U. S. C. Sec. 41, eighth), to-wit, the Railway Labor Act (45 U. S. C. Sec. 151, et seq.), as averred in paragraph 1 of the First Amended Complaint; and denies generally all averments of the grounds upon which the Court's jurisdiction depends.

2. Admits the averments of paragraph 2 of the First Amended Complaint.

3. Admits there has been for many years a craft or class of locomotive engineers in the service of Defendant carriers, but denies that such craft or class ever since the enactment of the Railway Labor Act has been recognized

by Defendants as a craft or class of employees for all the purposes of said Act with respect to the matters here in controversy or concerning disputes as to mileage and seniority rules, and other working conditions within the scope and subject matter of the Mediation Agreement of December 12, 1940 between Defendants and Third-Party Defendant, quoted in paragraph 8 of Plaintiff's First Amended Complaint, which agreement was made and entered into through the mediatory efforts of the National Mediation Board, an independent agency in the executive branch of the government established by the Railway Labor Act, as amended June 21, 1934, as is hereinafter more particularly averred. Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of other averments of said paragraph 3.

4. Denies that Plaintiff is, and ever since the enactment of the Railway Labor Act has been, the sole designated representative of said craft or class of locomotive engineers under and for all purposes of the Railway Labor Act with respect to the adjustment of enginemen's working lists in the advancement of firemen to the service of engineers and in the return of firemen from the position of engineers to firing service. Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of other averments of said paragraph 4.

5. Admits that the engineers' schedule of October 1, 1918 contains an Article 38 and an Article 66 as quoted in paragraph 5 of said amended complaint; but states that said articles and all of the alleged agreements set forth in said paragraph 5 are subject to Third-Party Defendant's right of representation in negotiating, bargaining and agreeing collectively with Defendants as to rules

and working conditions of employees alternately working as firemen and engineers in Defendants' engine service. Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth or other averments of said paragraph 5.

In further response to said paragraph 5, and to Article 38 and Article 66 of the Engineers' agreement therein set forth, Third-Party Defendant avers there are now, and continuously since October 1, 1918 there have been, in full force and effect, rules in the Firemen's agreement with Missouri-Kansas-Texas Lines reading as follows, to-wit:

"Article 44. We affirm the right to make and interpret contracts, rules and rates; and working agreements for Locomotive Firemen and Hostlers shall be vested in the regularly constituted Committee of the Brotherhood of Locomotive Firemen and Enginemen."

"Article 86. All rulings in reference to any article of this agreement shall be made in writing only by the officials signing this agreement, and the General Chairman of the Firemen's Committee will be furnished with a copy of such rulings, but such rulings shall not be made effective until agreed to between the parties herein mentioned."

6. Admits the averments in the first sentence of paragraph 6 of said amended complaint; denies the averments in the second sentence of said paragraph 6 and states that Third-Party Defendant, General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen, is now, and at the time of the institution of this suit was, a representative under the Railway Labor Act of employees in the service of defendants for all

purposes within the scope and subject matter of said Mediation Agreement of December 12, 1940.

7. Denies the averments of paragraph 7 of said amended complaint; except it admits that from time to time, when additional locomotive engineers are required for service, they are largely obtained from the ranks of qualified locomotive firemen in the order of their seniority of service; admits that the numbers of men needed in Defendant's service as engineers and as firemen fluctuate from time to time in accordance with changes in the volume of Defendants' transportation business, and that as said volume increases, senior firemen are called for service as engineers, and as it decreases, junior engineers are demoted for services as firemen; asserts that Third-Party Defendant is the representative, for purposes of collective bargaining and agreement, of persons in the employ of Defendants as firemen as well as those having the status of firemen. Admits that the rates of pay for engineers are, in general, somewhat higher than for firemen upon corresponding runs or in corresponding service, that engineers, as a group, are, in general, older in point of aggregate years of service, than are firemen, and that both crafts are paid wages on the basis of hours served or miles run.

8. Admits the making of the Mediation Agreement of December 12, 1940, quoted in paragraph 8 of said Amended Complaint, but denies that said Mediation Agreement was or is in violation of,—

(a) the Railway Labor Act; or

(b) the agreement between Plaintiff and Defendants effective October 1, 1918, or subsequent changes therein, additions thereto, modifications or interpretations there-

of, or any other agreements set forth in said amended complaint; or

(c). The rights of Plaintiff as sole designated representative of said craft of locomotive engineers; or

(d) any rights of the members of said craft of locomotive engineers of the Missouri-Kansas-Texas Lines.

Denies that by said Mediation Agreement Defendants and Third-Party Defendant have agreed in writing concerning rules and working conditions governing locomotive engineers as a class or craft, and states that thereby there were preserved to the membership of the Brotherhood of Locomotive Firemen and Enginemen established rights of seniority in their promotion and demotion in engine service on the Missouri-Kansas-Texas Lines.

9. Denies the averments of paragraph 9 of said amended complaint.

10. Denies the averments of paragraph 10 of said amended complaint.

General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen, Third-Party Defendant, for response to Defendants' answer admits, denies and avers as follows:

11. Admits the averments of paragraphs 8 to 16, inclusive, of Defendants' said answer, but says that the rules, regulations and practices referred to in paragraph 9 and 10 thereof arose out of alleged agreements between plaintiff and defendants dated May 14, 1929, December 14, 1938 and May 1, 1939, and set out in paragraph 5 of Plaintiff's First Amended Complaint, which

said agreements were in controvention of and opposed to previously negotiated and existing rules contained in the agreement between the Brotherhood of Locomotive Firemen and Enginemen and Missouri-Kansas-Texas Lines dated October 1, 1918.

12. Shortly after the two Brotherhoods were organized, the Brotherhood of Locomotive Firemen and Enginemen declared itself willing to work with the Brotherhood of Locomotive Engineers in the handling of disputes affecting the two groups of enginemen, and continued its concilatory efforts over a long period of years. From these efforts there resulted the Chicago Joint Working Agreement entered into by the two Brotherhoods as of July 1, 1913. That Agreement was designed to and did promote harmonious co-operation between the two organizations with respect to their claims of jurisdiction over the subject matter of such controversies as that involved herein; that said Agreement existed until 1927 when it was abrogated at the instance of and upon notice given by the Brotherhood of Locomotive Engineers; that the Brotherhood of Locomotive Firemen and Enginemen has always stood ready to continue said plan of co-operatively solving problems similar to those involved herein and throughout this controversy have signified its willingness to Defendants and to Plaintiff to enter into a joint agreement designed to avoid disrupting the peaceful working relations between the two organizations, but Plaintiff has continuously declined to enter into any negotiations looking toward a disposition of the controversy.

13. Third-Party Defendant further avers that, as alleged in paragraph 12 of Defendants' answer, it presented a demand upon Defendants for the establishment of new rules and regulations which, if adopted, would

have disposed of the controversy; that after the declination of the Defendants to agree thereto, the services of the National Mediation Board were invoked. The initial attempt of the said Board to compose the differences of the parties were unsuccessful, and thereupon the said Board suggested to the parties that they submit their dispute to arbitration under the terms and provisions of the Railway Labor Act. The General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen agreed to submit to arbitration, but Defendants refused, whereupon a strike vote was taken and a strike was authorized. Thereafter the National Mediation Board requested the parties to again confer with it in an effort to compose their differences and avert a strike. The Mediation Agreement of December 12, 1940 was consummated during such conference under the auspices and with the approval of the National Mediation Board.

Further responding to Plaintiff's First Amended Complaint, and to Defendants' Answer, Third-Party Defendant avers that,—

14. The Court lacks jurisdiction (a) over the subject matter in controversy, (b) over the parties to this controversy.

15. The averments of the amended complaint fail to state any claim against Defendants or against Third-Party Defendant, and the averments of Defendants' answer fail to state any claim against Third-Party Defendant, upon which relief can be granted.

16. The Court is without power or authority to declare the Mediation Agreement null and void, or to constitute for Third-Party Defendant another or different

bargaining representative for purposes within the scope and subject matter of said Mediation Agreement, or to modify or otherwise change, or to order the carrier defendants to modify or otherwise change, the terms and provisions thereof.

17. The Brotherhood of Locomotive Firemen and Enginemen is an unincorporated association composed of men employed by the various railroad companies of the United States as locomotive firemen and engineers, the duties as firemen at times including the operation of locomotives as engineers. A large majority of the employees alternately working as firemen and engineers in Defendants' engine service, and here involved, have their membership only in the Brotherhood of Locomotive Firemen and Enginemen, a small number have membership in both Brotherhoods, and a negligible number have membership only in the Brotherhood of Locomotive Engineers.

18. For many years there has been in effect between the General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen, Third-Party Defendant, and Missouri-Kansas-Texas Railroads an agreement prescribing rates of pay, rules and working conditions of firemen, hostlers and hostler helpers in the employ of the carrier defendants; and in negotiating and administering said agreement Third-Party Defendant is and has been the representative of such craft or class of employees within the meaning of the Railway Labor Act. On October 1, 1918 there was made effective between the Brotherhood of Locomotive Firemen and Enginemen and Missouri-Kansas-Texas Lines a schedule of rules, constituting an agreement between them within the meaning of the Railway Labor Act, which agreement, with amendments, modifications and additions, at all times

since its effective date has been, and is now, in full force and effect. Among said rules is one governing the promotion of firemen and the establishment of their seniority as engineers, numbered Article 58 (g) and reading as follows:

"Firemen having successfully passed qualifying examination shall be eligible as engineers. Promotion and the establishment of a date of seniority as engineer, as provided herein, shall date from the first service as engineer, when called for such service, provided there are no demoted engineers back firing. No demoted engineer will be permitted to hold a run as fireman on any seniority District while a junior engineer is working on the engineers' extra list or holding a regular assignment as engineer on such seniority district."

The Engineers' agreement of October 1, 1918 contains a rule, numbered Article 43 (g), in the identical language of the above quoted Article 58 (g) of the Firemen's agreement of October 1, 1918.

Article 49 (g) of the Firemen's agreement, further prescribing the seniority rights of Firemen as Engineers, is to the following effect:

"When the number of engineers on the extra list is reduced those who have been promoted from firemen and are affected by the reduction will take such runs as they are entitled to under their seniority rights. When again necessary to increase the number of engineers, such firemen will hold the same rights as engineers as formerly held by them and will be required to take service as engineers in their proper station, failing to do so, they will forfeit their seniority rights as firemen."

19. The Firemen's agreement and the Engineer's agreement contain other rules in common governing the promotion of firemen to service as engineers in the order of their seniority as engineers. These rules, Article 49 (c) in the Firemen's agreement and Article 44 (c) in the Engineer's agreement, are identical in language, and provide:

"Engineers taken off under this rule shall be returned to service as engineers in the order of their seniority as engineer, and as soon as it can be shown that engineers in assigned or extra passenger service can earn the equivalent of 4,800 miles per month; in assigned, pooled, chain-gang or other regular service paying freight rates the equivalent of 3,800 miles per month or in extra service the equivalent of 3,000 miles per month."

20. The Mediation Agreement of December 12, 1940 is in accord with and is sustained by the above quoted rules from the Firemen's agreement.

21. The General Committee of Adjustment of the Brotherhood of Locomotive Engineers is the representative of the Engineers employed by the Missouri-Kansas-Texas Lines which constitute a separate craft or class of employees within the contemplation of the Railway Labor Act; and the General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen is the representative of the firemen employed by the Missouri-Kansas-Texas Lines, and they likewise constitute a separate craft or class of employees under the said Act.

22. The carrier's needs for engineers are ordinarily supplied by promoting its firemen to positions as engineers, said promotions being made in the order of their

seniority of service. The number of engineers and firemen employed by the carrier fluctuates according to the business conditions being experienced by the carrier. As the volume of business increases, the senior firemen are assigned to jobs as engineers; and as the volume of business decreases, the engineers with junior seniority dates are demoted to firemen's jobs.

23. The time and circumstances under which firemen are taken from their jobs as firemen and assigned to jobs as engineers, and demoted from jobs as engineers and returned to jobs as firemen, are the subject of direct interest and concern to all the members of the craft or class of firemen in that the transfer of the older firemen to jobs as engineers affects to a varying degree the jobs and earning power of all the firemen, including those furloughed (laid off) or on the extra board, and are proper subjects for collective bargaining between the carrier and the Brotherhood of Locomotive Firemen and Enginemen as the representative of the firemen under the Railway Labor Act.

24. The Mediation Agreement of December 12, 1940 between the Brotherhood of Locomotive Firemen and Enginemen and Missouri-Kansas-Texas Lines is an agreement establishing the time and circumstances under which employees will be called from their work as firemen and be assigned to jobs as engineers, and is concerned with a subject appropriate for collective bargaining between the said carriers and the Brotherhood of Locomotive Firemen and Enginemen as the representatives of the craft of firemen under the Railway Labor Act.

Wherefore, Third-Party Defendant prays that plaintiff's First Amended Complaint and Defendants' answer, to the extent that either asserts claims against the General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen, he dismissed, and that all

relief asked against Third-Party Defendant be denied, for that,—

25. The Court lacks jurisdiction (a) over the subject matter in controversy, and (b) over the parties to this controversy.

26. The averments of the amended complaint fail to state any claim against Defendants or against Third-Party Defendant, and the averments of Defendants' answer fail to state any claim against Third-Party Defendant, upon which relief can be granted.

27. The Court is without power or authority to declare the Mediation Agreement null and void, or to substitute for Third-Party Defendant another or different bargaining representative for purposes within the scope and subject matter of said Mediation Agreement, or to modify or otherwise change, or to order the carrier defendants to modify or otherwise change, the terms and provisions thereof.

28. In the alternative, Third-Party Defendant prays (a) that the Court adjudge and declare the Mediation Agreement of December 12, 1940 valid and binding upon all parties to this cause, and (b) that Third-Party Defendant have such other and further orders and relief as the Court may deem necessary and proper in the premises.

Dated at Dallas, Texas, May 31, 1941.

(Signed) HAROLD C. HEISS,
(Harold C. Heiss)

906 Keith Building,
Cleveland, Ohio.

(Signed) T. D. GRESHAM.
(T. D. Gresham)

921 Kirby Building,
Dallas, Texas.

This answer this 31st day of May, 1941 has been served upon the Plaintiff by handing a true and correct copy thereof to J. W. Madden, Jr., its attorney of record, at 2017 Republic Bank Building, Dallas, Texas, and has been served upon Defendants by handing a true and correct copy thereof to G. H. Penland, their attorney of record, at the Missouri-Kansas-Texas Building, Dallas, Texas.

(Signed) T. D. GRESHAM,
Attorney for Third-Party Defendant.

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57 DEFENDANTS' ANSWER TO AMENDED COMPLAINT AND ANSWER OF THIRD PARTY DEFENDANT.

Filed June 7, 1941.

Now come the Missouri-Kansas-Texas Railroad Company and the Missouri-Kansas-Texas Railroad Company of Texas, defendants in the above numbered and entitled cause, and file this their first amended answer to plaintiff's first amended complaint and answer to the original answer of third party defendant, and for such answer, defendants respectfully show to the Court as follows:

1.

These defendants admit the allegations contained in paragraphs 1 and 2 of said amended complaint.

2.

These defendants admit the allegations contained in paragraph 3 of said complaint, except that portion thereof wherein it is alleged that a majority of all of said loco-

motive engineers comprising said craft or class on the lines of defendants are members of the Grand International Brotherhood of Locomotive Engineers. As to this allegation the defendants say that they are without information and cannot, therefore, either admit or deny the same.

3.

These defendants admit the allegations contained in paragraph 4 of said complaint, except as may be hereinafter more specifically alleged.

4.

Defendants admit the allegations contained in paragraphs 5 and 6 of said complaint.

5.

Defendants admit the allegations contained in the first and last sentences of paragraph 7 of said complaint, but deny the other allegations therein contained.

6.

In answer to paragraph 8 of said complaint, these defendants admit the making of the agreements described in said paragraph, but deny that same were made in violation of:

(a) Said Railway Labor Act.

(b) Said Agreement effective October 1st, 1918, and subsequent changes therein, additions thereto, modifications and interpretations thereof, and the other agreements herein set forth;

(c) The rights of the plaintiff as sole designated representative of said craft of locomotive engineers;

(d) The rights of the members of said craft of locomotive engineers.

These defendants admit that the letters set forth in said paragraph are those referred to in said Mediation Agreement.

7.

These defendants deny that said Mediation Agreement is an unlawful interference with the rights of said craft of engineers to negotiate exclusively through its designated representatives with respect to rules and working conditions governing said craft or class, and deny that it is an unlawful interference with the rights of said craft or class to have rules and working conditions governing it determined by its representatives.

These defendants admit that they canceled the agreements set forth in said paragraph as therein alleged.

8.

These defendants admit the allegations contained in the first sentence of paragraph 10 of said complaint, but deny the other allegations therein contained.

Defendants, in response to the answer filed herein by the General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen, admit, deny and aver as follows:

9.

Defendants admit that there is contained in the agreement entered into between them and Third Party De-

fendant dated October 1st, 1918 the articles set forth in paragraph 5 of said answer.

10.

Defendants deny that the agreements entered into between plaintiff and defendants referred to in paragraph 11 of said answer were, at the time of the making thereof or at any time subsequent thereto, in contravention of and opposed to previously negotiated and existing rules contained in the agreement of the Brotherhood of Locomotive Firemen and Enginemen and these defendants.

11.

Defendants state that they are not advised as to the willingness of the Locomotive Firemen and Enginemen to work with the Brotherhood of Locomotive Engineers in the handling of disputes affecting the two groups of enginemen, nor are they advised as to the period of time over which any such conciliatory efforts were made, if at all, as alleged in paragraph 12 of said answer, and these defendants cannot, therefore, either admit or deny said allegations. These defendants admit that an agreement commonly known as the Chicago Joint Working Agreement was entered into by the two brotherhoods as of July 1st, 1913, and that the agreement promoted harmonious cooperation between the two organizations with respect to matters such as those involved herein, and that said agreement existed until 1927. These defendants are not advised at whose instance the said contract was abrogated, nor have they been advised of the desire or willingness of Third Party Defendant to enter into a joint agreement designed to avoid disrupting peaceful working relations between the two organizations, nor are they advised as to the attitude of plaintiff with respect

to any such arrangement or agreement, and these defendants cannot, therefore, either admit or deny such allegations.

12.

These defendants deny that the adoption by them of the new rules and regulations which Third Party Defendant demanded that they adopt, as alleged in paragraph 13 of said answer would have disposed of the controversy herein presented.

13.

Defendants admit the allegations in paragraph 17 of said answer, with the exception of the allegation contained therein to the effect that a large majority of the employees alternately working as firemen and enginemen in defendants' engine service have their membership only in the Brotherhood of Locomotive Firemen and Enginemen, and that a small number have membership in both brotherhoods, and that a negligible number have membership only in the Brotnerhood of Locomotive Engineers. As to these allegations these defendants say that they are without information and cannot, therefore, either admit or deny the same.

14.

Defendants admit the allegations contained in paragraphs 18, 19 and 21 of said answer.

15.

Defendants admit the allegation contained in the first sentence of paragraph 22 of said answer, but deny the other allegations therein contained.

16.

Defendants admit the allegations contained in paragraph 23 of said answer, but in th. connection say that the engineers employed in defendants' service likewise have a direct interest and concern in the time and circumstances under which these assignments were made.

17.

For further answer to said amended complaint and answer of Third Party Defendant; these defendants would respectfully show to the Court that the conditions described in plaintiff's petition have not only given rise to the controversy described in paragraph 10 thereof, but for many years have been fruitful of controversy; that the fact that there exists a class of employees of these defendants serving both as firemen and engineers has been the basis of claims on the part of the plaintiff and of the General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen as to their respective jurisdiction to negotiate with the defendants relating to wages and working conditions of the men working interchangeably in the two crafts; that formerly, under the terms of what is known as the Chicago Joint Working Agreement made between the representatives of the two crafts, the solution of the controversies arising, such as those herein involved, was committed to and determined by representatives of such crafts without the participation of defendants therein; that such agreement was terminated by said crafts many years ago, since which time controversies have frequently arisen as to the particular craft with which defendants should negotiate with respect to the service to be performed by those employees working interchangeably in said crafts.

18.

Following the termination of said Chicago Joint Working Agreement, each of said crafts contended that it was within its province to represent those of its members engaged in this interchangeable service in negotiating rules covering working conditions of those engaged therein. Thereupon, these defendants sought to compose the difference between such organizations and to obtain a joint agreement with the two crafts covering the rules governing such working conditions. The defendants, being unsuccessful in these attempts and being under a duty to render an efficient common carrier service to the public, issued instructions to their officials charged with the duty of providing such service as to the manner of selecting the members of the two crafts for the performance of this interchangeable service, and in connection therewith the defendants followed, to the extent that it was possible for them to do so, the established rules, regulations and agreements in the selection of the members of the two crafts to engage in this service. That in the operation and administration of such practices, rules and regulations protests would be presented to defendants by one or the other of said crafts with respect thereto. That these defendants continued the operation of their railroads under said rules, regulations and practises so established by them for the performance of this service until on or about the 12th day of December, 1940, the date of the agreement referred to in the petition of the plaintiff filed herein.

19.

That on or about the first day of December, 1937, the General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen complained to

defendants of an agreement theretofore entered into between the defendants and the plaintiff herein dated on or about the 14th day of May, 1929, covering the filling of vacancies as engineers on what is known as the "Pool or Chain Gang Board" at Smithville, Texas. In this connection, defendants allege that a "Pool or Chain Gang Board", as that term is used in railroad parlance, is a specific group of members of a craft assigned to irregular service and who are called to such service in the order of their rotation on such board. That these defendants rejected the complaint of said General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen and adhered to its said agreement and to its rules, regulations and practices governing such service theretofore established, and advised the said General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen that they would do so.

20.

Thereafter, on or about June 1st, 1938, the said General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen complained to defendants with respect to another regulation theretofore established by them pertaining to the manner in which demoted engineers were called for service as engineers at away from home terminal points.

(In this connection these defendants would show the Court that they have their lines of railway divided or segmented into what is known as dictricts or divisions, and within each such district or division a point is designated as the home terminal point and the crews engaged in the operation of their trains, including the members of the two crafts referred to, are assigned to some one of such districts or divisions and members of

each of said crafts so assigned hold seniority rights only within the district or division to which such employee is assigned. That by the term "away from home terminal point" is meant a point other than the terminal designated as the seniority terminal point.)

That defendants rejected this complaint and continued to adhere to the practices theretofore established by them regulating such service.

21.

The continued insistence by the said General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen upon modifications in the practices, rules and regulations established by the defendants governing such service prompted these defendants to undertake to invoke the aid of the National Mediation Board, created under the provisions of the Railway Labor Act, to compose their differences. The National Mediation Board declined to take jurisdiction of the controversy. Thereupon, the said General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen presented a demand upon these defendants for the establishment of new rules and regulations, under the terms of which the members of its craft engaged in or subject to such interchangeable service would be guaranteed under certain conditions set forth in said demand their earnings as firemen while employed as engineers. This demand defendant likewise declined, and thereupon the General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen invoked the aid of the National Mediation Board to use its good offices in bringing about an agreement with respect to the matters set forth in said demand upon defendants.

22.

The National Mediation Board was unsuccessful in its efforts to compose the differences of the parties to such mediation, and thereupon the said committee called upon its membership for a strike vote to determine whether the members of said craft would engage in a strike on account of the refusal of defendants to acquiesce in the demands made upon them by said committee. Following the taking of said strike vote the announcement was made that such a strike had been authorized, and thereupon the National Mediation Board called upon the parties to again confer with it in an effort to compose their differences and avert such strike. Pursuant to such request such a conference was held and out of such conference the agreement referred to in plaintiff's petition was entered into.

23.

Thereupon, defendants served notice upon plaintiff that they desired to cancel the provisions in the agreement entered into with it which were in conflict with the provisions of the agreement entered into between defendants and said Brotherhood of Locomotive Firemen and Enginemen, which request the plaintiff declined. Conferences between said plaintiff and defendants followed without reaching a satisfactory agreement with respect to the matters in controversy. Thereupon, plaintiff invoked the aid of the National Mediation Board to compose such differences, and, following the receipt of notice from the National Mediation Board of the termination of its efforts to mediate such controversy, defendants served notice of cancellation upon plaintiff of the provisions of the agreements between them which were in conflict with the provisions of the agreement set forth

in the complaint filed herein. Such termination became effective on or about April 13th, 1931.

24.

That it has at all times been the position of defendants that inasmuch as the services, the performance of which gave rise to these controversies, were of necessity required to be performed by members of both of said crafts, agreements should be entered into between said crafts covering the rendition of such services, and these defendants have repeatedly used their best efforts to bring about an agreement between said two crafts to that end. That these defendants have been at all times and are now willing to enter into a joint agreement with said crafts covering the manner of the rendition of such service, provided that defendants shall not, under the terms of any such agreement, be required to do other than pay the members of the particular craft rendering such service for the service so rendered. That the continued existence of these controversies has and will continue to be a source of trouble, confusion and expense to defendants, and has and will continue to materially hamper defendants in the performance of their common carrier duties to the public, and defendants therefore join in the prayer of the plaintiff that the Court determine for the guidance of all parties the respective rights of the parties with respect to contracting for and performance of such services.

Wherefore, Third Party Defendant having answered herein, these defendants pray that upon hearing hereof, this Court determine for the guidance of all parties the respective rights of the parties with respect to contracting for and performance of such services as are hereinabove referred to, and for such other and further orders

as the Court may think necessary and proper in the premises.

(Signed) CHARLES C. HUFF,
(Charles C. Huff)
(Signed) G. H. PENLAND,
(G. H. Penland)
TOUCHSTONE, WIGHT,
GORMLEY & TOUCHSTONE,
By (Signed) LUCIAN TOUCHSTONE.

1108 Magnolia Building,
Dallas, Texas.

A copy of this answer has been this the 6th day of June, 1941, served upon the plaintiff and Third Party Defendant by depositing a true and correct copy thereof in the United States mails, addressed to the attorneys of record for the respective parties.

(Signed) G. H. PENLAND.

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70 STIPULATION.

Filed June 11, 1941.

The parties to this cause, by and through their respective attorneys of record, hereby stipulate, subject to the approval of the Court, as follows:

That plaintiff may file a Reply to the Answer of the Third Party Defendant, provided same is filed on or before the 18th day of June, 1941.

That the time within which plaintiff may file a Reply to the Defendants' First Amended Answer is extended until June 18, 1941.

Dated at Dallas, Texas, this 11th day of June, 1941.

(Signed) C. E. WEISELL,

Engineers Building,
Cleveland, Ohio.

(Signed) J. W. MADDEN, JR.,
Attorneys for Plaintiff.

2017 Republic Bank Building,
Dallas, Texas.

(Signed) C. C. HUFF,
G. G. PENLAND,
TOUCHSTONE, WIGHT,
GORMLEY & TOUCHSTONE,
By LUCIAN TOUCHSTONE,
Attorneys for Defendants.

1108 Magnolia Building,
Dallas, Texas.

(Signed) HAROLD C. HEISS,

906 Keith Building,
Cleveland, Ohio.

(Signed) T. D. GRESHAM,
Attorneys for Third Party Defendant.

921 Kirby Building,
Dallas, Texas.

71 ORDER.

Filed June 11, 1941.

On this the 11th day of June, A. D. 1941, it appearing to the Court that the parties to the above entitled and numbered cause have stipulated as follows:

That plaintiff may file a Reply to the Answer of the Third Party Defendant, provided same is filed on or before the 18th day of June, 1941.

That the time within which plaintiff may file a Reply to the Defendants' First Amended Answer is extended until June 18, 1941.

It is accordingly Ordered that the plaintiff may file herein a Reply to the Answer of the Third Party Defendant at any time on or before June 18, 1941, and that the time within which plaintiff may file a Reply to the Defendants' First Amended Answer is extended until June 18, 1941.

(Signed) WM. H. ATWELL,
U. S. Dist. Judge.

Approved as to Form:

(Signed) G. H. PENLAND & LUCIAN TOUCHSTONE,
Attorneys for Defendants.

(Signed) T. D. GRESHEM,
Attorney for Third Party Defendant.

Entered on the 11th day of June, A. D. 1941, in Volume 32, page 494 of the Civil Minutes.

72 PLAINTIFF'S REPLY.

Filed June 18, 1941.

Now comes the General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad Company, plaintiff in the above entitled and numbered cause, and for reply to defendants' first amended answer would show to the Court as follows:

1. Plaintiff admits the allegations contained in paragraph 17 of said amended answer, except that plaintiff denies that the defendants did not participate in any controversies that existed under the Chicago Joint Working Agreement, and alleges that while said Chicago Joint Working Agreement was in effect the defendants participated in many disputes and controversies, and that during all of the time that the said Chicago Joint Working Agreement was in effect there were numerous disputes and controversies which arose between plaintiff and the third party defendant.

2. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 of said amended answer.

3. Plaintiff admits the allegations contained in paragraphs 19 and 20 of said amended answer.

4. Plaintiff admits the allegations contained in the first two sentences of paragraph 21 appearing on page 8 of said amended answer. As to the remainder of the allegations contained in said paragraph 21 of said amended answer, plaintiff is without knowledge or information sufficient to form a belief as to the truth of such allegations.

5. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of said amended answer.

6. Plaintiff admits the allegations containd in paragraph 23 of said amended answer, except that plaintiff denies that such termination became effective on or about April 13, 1931, and alleges that the termination was made effective on or about April 13, 1941.

7. Plaintiff denies the allegations contained in the first sentence of paragraph 24 of said amended answer, except that plaintiff admits that since December 12, 1940, the defendants have made efforts to bring about an agreement between the two crafts. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second sentence of paragraph 24 of said amended answer.

Plaintiff, with leave of this Court first had and obtained, for reply to the answer of third party defendant, would show to the Court as follows:

8. Plaintiff denies that portion of paragraph 5 of said answer, wherein it is alleged that all of the alleged agreements (referring to the Engineers' Schedule of October 1, 1918, and Articles 38 and 66 of same, as quoted in paragraph 5 of plaintiff's amended complaint) are subject to third party defendant's right of representation in negotiating, bargaining and agreeing collectively with defendants as to rules and working conditions of employees alternately working as firemen and engineers in defendants' service. Plaintiff admits that Articles 44 and 86, as set forth in paragraph 5 of said answer on page 3 thereof, are part of the agreement between the firemen and the Missouri-Kansas-Texas Lines.

9. Plaintiff denies that portion of paragraph 6 of said answer, wherein it is alleged that the third party defendant, General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen, is now and at the time of the institution of this suit was the representative under the Railway Labor Act of employees in the service of defendants for the purpose within the scope and subject matter of said Mediation Agreement of December 12, 1940.

10. Plaintiff denies that portion of paragraph 7 of said answer, wherein it is alleged that third party defendant is the representative for purposes of collective bargaining and agreement of persons in the employ of the defendants as firemen, as well as those having the status of firemen, and says that the third party defendant is the representative for the purposes of collective bargaining and agreement only of firemen, and not of engineers who might, at times, be construed by third party defendant as having the status of firemen.

11. Plaintiff denies that portion of paragraph 8 of said answer, which alleges that by entering into the Mediation Agreement third party defendant has preserved to the membership of the Brotherhood of Locomotive Firemen and Enginemen established rights of seniority in their promotion and demotion in engine service on the Missouri-Kansas-Texas Lines.

12. Plaintiff denies that portion of paragraph 11 of said answer, which alleges that the agreements between plaintiff and defendants dated May 14, 1929, December 14, 1938, and May 1, 1939, set out in paragraph 5 of plaintiff's first amended complaint, were in contravention of and opposed to previously negotiated and existing rules contained in the agreement between the Brother-

hood of Locomotive Firemen and Enginemen and the Missouri-Kansas-Texas Lines dated October 1, 1918, and alleges that in the event plaintiff should be mistaken in this allegation and it should appear that the said agreements are in contravention of any rules contained in third party defendant's agreement, such rules are an invalid and illegal attempt to regulate the engineers' craft, and therefore of no force or effect.

13. Plaintiff denies the allegations contained in paragraph 12 of said answer, except that plaintiff admits that the Chicago Joint Working Agreement was entered into between the two Brotherhoods as of July 1, 1913, that same continued in effect until 1927, when it was canceled on notice given by plaintiff, and admits that plaintiff has refused to enter into any new joint agreement similar to the Chicago Joint Working Agreement, and denies that the said agreement was designed to or did promote harmonious co-operation between the two organizations with respect to their claims of jurisdiction over the subject matter of such controversies as that involved herein, and alleges that during all of the time that the said Chicago Joint Working Agreement was in effect there were continual disputes and controversies between the two Brotherhoods which had never existed prior to July 1, 1913.

14. That plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of said answer.

15. Plaintiff denies all of the allegations contained in paragraph 14 of said answer.

16. Plaintiff denies all of the allegations contained in paragraph 15 of said answer.

17. Plaintiff denies all of the allegations containd in paragraph 16 of said answer.

18. Plaintiff denies all of the allegations contained in paragraph 17 of said answer, except that plaintiff admits that the Brotherhood of Locomotive Firemen and Enginemen is an unincorporated association composed of men employed by the various railroad companies of the United States as locomotive firemen.

19. Plaintiff admits all of the allegations contained in paragraphs 18 and 19 of said answer, except that plaintiff alleges that any and all provisions of the Firemen's Agreement, quoted therein, which regulate or purport to regulate the craft of engineers, or the mileage of engineers, are illegal, invalid and without force or effect.

20. Plaintiff denies all of the allegations contained in paragraph 20 of said answer.

21. Plaintiff admits the allegations contained in paragraphs 21 and 22 of said answer.

22. Plaintiff denies all of the allegations contained in paragraph 23 of said answer, and alleges that when employees are serving defendants as engineers the plaintiff is their sole designated representative, with the exclusive right to bargain collectively for them with the defendants; and further alleges that the time and circumstances under which employees are assigned to jobs as engineers, or are removed from jobs as engineers, are matters of exclusive right of collective bargaining between the plaintiff *and* and the defendants.

23. Plaintiff denies all of the allegations contained in paragraph 24 of said answer.

Wherefore, plaintiff demands judgment as prayed for in plaintiff's first amended complaint.

(Signed) C. E. WEISELL,

Engineers Building,
Cleveland, Ohio.

(Signed) J. W. MADDEN, JR.
2017 Republic Bank Building,
Dallas, Texas.

This reply, on this the 18th day of June, 1941, has been served upon the defendants by depositing a true and correct copy of same in the United States mails, addressed to Touchstone, Wight, Gormley & Touchstone, 1108 Magnolia Building, Dallas, Texas, attorneys of record for defendants, and upon the third party defendant by depositing a true and correct copy of same in the United States mails, addressed to T. D. Gresham, 921 Kirby Building, Dallas, Texas, attorney of record for third party defendant.

(Signed) J. W. MADDEN, JR.,
Attorney for Plaintiff.

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79. FINAL JUDGMENT.

Filed June 30, 1941.

This cause coming regularly on for trial before the Court, came all parties, General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad, *Plaintiff*, Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, *Defendants*, and General Grievance Committee of the Brotherhood of Loco-

motive Firemen and Enginemen, *Third-Party Defendant*, by their attorneys of record, respectively. The Court having heard the evidence and argument of counsel, and having made and entered of record its findings of fact and conclusions of law;

1. It is Ordered and Adjudged that Plaintiff's complaint be dismissed on the merits;

2. It is Decreed and Declared that Defendants were within their legal rights in negotiating with the Third-Party Defendant and in entering into the Mediation Agreement of December 12, 1940, which is valid and binding and does not violate the Railway Labor Act, or any other law, or infringe any right or agreement of the Plaintiff, or of the members, or any of them, of the craft of locomotive engineers;

3. It is further Decreed and Declared that the Defendants had the right to negotiate with both of the other parties thereto as the duly designated representative of the respective crafts, and with either of them should the other decline to participate in said negotiation with reference to the passing of a man from the working lists of the firemen to the working lists of the engineers, and what should happen when an engineer, who was in the pool was absent with reference to the choice of the extra man or the demoted engineer available on the firemen's lists, and with reference to each of the three items covered by the Mediation Agreement of December 12, 1940, *as made an issue by the pleadings.* (WmHA)
(in ink)

4. All relief not herein expressly granted is hereby denied; and;

5. Plaintiff shall pay the costs in this behalf incurred, as taxed by the clerk of the Court, for which let execution issue.

To which action and ruling of the Court the Plaintiff then and there in open Court duly excepted.

Dated June 30, 1941, at Dallas, Texas.

(Signed) WM. H. ATWELL,
United States District Judge.

Approved as to form:

(Signed) J. W. MADDEN, JR.,
Attorney for Plaintiff.

TOUCHSTONE, WIGHT, GORMLEY & TOUCHSTONE,

By (Signed) ALLEN WIGHT,
Attorneys for Defendants.

(Signed) T. D. GRESHAM,
Attorney for Third-Party Defendant.

Entered on the 26th day of June, A. D. 1941, in Volume 32, page 586 of the Civil Minutes.

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81 COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW.

Filed June 28, 1941.

This case is so interesting, and involves matters of such importance, that if one were not sitting as a trial Judge, one would be tempted to construct a written opinion after further thought.

The plaintiff prays that the Court adjudge and declare that the plaintiff is the sole representative of the craft

of engineers, with the exclusive right to negotiate, bargain, and agree collectively with the defendants, as to pay, rules and working conditions of locomotive engineers. That declaration, if it is of any value to the plaintiff, should be made, and is made by the Court in accordance with the explicit directions of the statute, and in accordance with the decisions of higher Courts construing that particular statute.

The plaintiff then prays that the contract of October 1, 1918, as amended, modified and interpreted, and the other agreements therein set forth are valid, and are in full force and effect. With reference to that prayer, the testimony is conflicting. There was a working agreement between the two involved unions, which was dissolved at the request of the plaintiff. Thereafter there were efforts to re-make such a contract, at the request of the third party defendant. That effort was futile.

The third paragraph of the prayer is that the Court shall declare that the mediation agreement of date December 12, 1940, is null and void and of no force and effect. I cannot find authority in law or fact for the Court to exercise that power, or, to make such a declaration.

It seems to me that the two labor unions, for both of which we have the utmost respect, and in both of whom we have the fullest confidence, worked together, as I have already indicated, with a sensible result, in a sensible direction, until the plaintiff organization saw fit to discontinue that relation. That while that agreement was in force and effect, the plaintiff secured by a sort of attrition modifications and enlargements of its privileges, we will say, at the Smithville Division, which were, perhaps, not justified; I do not think it is necessary for the Court to say one way or the other about it, except, perhaps, that it was not justified by its understanding with the third party defendant. The third party de-

fendant ultimately and finally made a complaint with reference to it. Its complaint seemed to be fair to the carrier, and the carrier ordered the former status resumed, then the plaintiff complained, then the carrier returned to the plaintiffs' theory; then the third party defendant complained, and the carrier then went with the third party defendant to the authorities of the Labor Act, and one of those boards declared its agreement with the correctness of the contention of that particular organization. That is a somewhat summary statement of the situation, but that is as I gather it.

Into all of those proceedings the carrier constantly solicited the appearance and participation of the plaintiff. Plaintiff determinedly kept clear of those negotiations, kept clear of the very tribunal that the Congress had instituted for the settlement of such disputes. It will be borne in mind that this dispute was one between unions, and not a dispute between a union and the employer, and it was an argument between them as to their respective jurisdictions, and with respect to their powers, neither of which, as has been suggested here, was either curtailed, or, limited by the Labor Board Act.

Just why the plaintiff refused to enter those tribunals is not made clear in the testimony.

At the beginning of the hearing, the Court asked if there was any suggestion of the lack of jurisdiction by either of the defendants, to the plaintiffs' right to proceed here. The lack of jurisdiction that has been presented by the defendant, is not what the Court had in mind. I do not mean now, that there is any virtue in the interrogation that arose in the mind of the Court with reference to jurisdiction, but, in this territory, where we are just now, wondering why the plaintiff did not seek its rights within the Railway Labor Act, we find that some courts have denied any relief to parties who have

access to an Administrative Board, until they shall have made use of such right, or, unless they have been denied by their adversary's act, entry there. As interesting, see Mallehan v. T&P, 87 S. W. (2) 771; N & W. v. Harris, 84 S. W. (2) 69; Nord v. Griffin, 86 F (2) 481; Gleason v. Thomas, 5 S. E. (2) 791.

The interrogation becomes italicised when we view with care where this dispute might go. This dispute is, as I have already said, and as the parties full well know, not between employer and employee, but if the dispute results in a crippling of arteries of commerce, and the hurting of men who are at work in and on those arteries, then the damage is just as great as if the dispute had been between an employer and an employee. All disputes of this nature, all disputes, I take it, are to be settled by these Boards, heading to an Emergency Board, appointed by the President.

The Act itself says, "This act is designed to avoid any interruptions to commerce, or to the operation of any carrier engaged therein; to provide for the prompt and orderly settlement of all disputes—that word 'all' is a pretty broad, big word—concerning rates of pay, rules, or working conditions. To provide for the prompt and orderly settlement of all disputes growing out of grievances, or, out of the interpretation, or, operation of agreements covering rates of pay, rules or working conditions."

It is difficult to conceive of more *all embracing* language than that used by the Congress. So, why, I continue to ask myself, should a Court declare in any other way than the Act itself provides the Court shall declare? There is provision for Court action and Court judgments. May we apply a well known rule, that a specification of a remedy precludes the use of that remedy in any other way than that which is specified.

The act goes a little bit further. It declares that it is *the duty* of the carriers and employees to settle disputes. Then, we come, of course, to the provision for the consideration of disputes by representatives, designation of such representatives, collective bargaining, and so forth. That is the particular section that the plaintiff claims has been violated by the agreement which subsequently evoluted out of continuous consultations in which the plaintiff refused to participate, under the Act. One cannot say that the engineers' organization does not have a right to bargain under the act, for such matters as effect the three different divisions that are specified in the statute.

I do not need, here, of course, to refer again to the number and character of the Boards. Perhaps it is unnecessary to refer again to the provisions with reference to Court review. The Court steps in when requested so to do by a successful party before the boards, when the defeated party does not respond; and the ground upon which such entry may be made is specifically set out in the statute. The sanctity and wisdom of the action of the boards, all through the Act, is recognized, and only for fraud, and one other specified ground, may one enter the Courts after the boards have spoken.

Now, I am answered in my own mind, as well as by counsel, I am sure, by the suggestion that the declaratory judgment Act is *all* operative for the settlement of all disputes, or justifiable controversies, and its purpose was to save litigation and trouble, but it can be no more far reaching than the equity powers that formerly vested in the chancellor, and it never was so intended. All those powers were well known to Congress when this statute was written. There is nothing in the declaratory statute that is sacrosanct, or, that superimposes, or, covers more ground that the original equity powers, except, perhaps, in its right to declare rights without

execution to follow, or something of that sort. It is unnecessary to further diagram.

There is another, I think a very strong reason for this all-inclusive settling act, with reference to railroads. As has already been said in argument, it did not enter a new field, the field was already known, it was already fallow, it was already plowed, it had been harvested, everything, every marker, every bearing was known in that field, all the soil was known, all the seasons that play upon it, all the crops that spring from it, of both discord and unity, everything was known that is now known with reference to these controversies; and we cannot say that there is anything not included in the Act. One of the things that were known, is and was that Courts are not supposed to know as much of the twists and turns and fineness and wisdom of the rules, regulations, and schedules of labor organizations, and their employers, and their contracts and things of that sort, as their own representatives. It is a peculiar field. And, these Boards that are provided for are adept, are experts in that field. These Boards know more about the controversy between the engineers and the firemen and enginemen than a Court could possibly know, who was not raised in that atmosphere.

But, be that as it may, that is the situation that the Congress knew about and created Boards to settle those things and those disputes. It did not allow the Courts to do it, and it said that Boards are going to do it. It also said when the Courts would come in, after the Boards acted, and how they could be invited in. That is all in the act.

Now, what did it do that for? So as to make an exclusive settlement place for all disputes. That is what that territory is for, sacred territory, territory that belongs to all those parties, and as well belongs to the public; high ground, territory to which everybody looks;

high ground, because it is always exposed by the press of the country; all eyes are turned to disputes if and when an interstate commerce carrying carrier is about to be prostrated, because of a difference between it, or its employees, or of disputes between its employees. But since there is another thought—decisive of the case, it is unnecessary to rule on the point I have labored.

If we take another step, we have a case clearly in territory that is not "no man's", but a territory that belongs to two men. It is an overlapping territory. It is a territory in which both the Third Party defendant and the plaintiff have a right to tread, and have a right to treat, and have a right to contract concerning. There cannot be any controversy about that; no just eye can look at it in any other way.

The demotion of a fireman, the demotion of an engineman, the promotion of a fireman, or the promotion of an engineer, after demotion, the increase of the engineer's rank, the rotating downward of potential engineers, known as firemen, the one gravitating to the other, and the other gravitating to the one, interchangeably operating; friends working together in the same cab, on the same engine, are so close and so constantly passing from one territory to the other, that both have a right under the statute to act. And I think that the defendant had a right to bargain with the Firemen and Enginemen with reference to the matter that effected that particular craft. I am sure that the defendant would have had a right to have bargained with the engineers with reference to anything that affected that particular two-man territory, that overlapped, or overlapping territory, or, that territory that belonged to both. See Virginian Ry. Co. v. System Federation, 300 U. S. 515. And, it seems to me that what the Firemen and Enginemen contend for is righteous, that is the way it looks to me in their controversy with the Engineers.

We have a quick conscience in America, and the detailing of a situation itself simply precludes any mind not affected with interest from viewing it in any way except as I have indicated.

91 FINDINGS OF FACT.

1.

I find that the plaintiff has the right under the Railway Labor Act to contract for its craft.

2.

I find that the third party defendant has a right to contract under the Railway Labor Act for the three things set out in the act, relating to its craft.

3.

I find that the controversy between the plaintiff and the third party defendant, as set out in the pleadings, and as disclosed by the testimony, is over a matter that effects both crafts.

4.

That the defendant had a right to contract with either of the crafts with reference to the questions presented in the pleadings of the parties here, that is, the passing of a man from the working lists of the firemen to the working lists of the engineers, and what should happen when an engineer, who was in the pool was absent with reference to the choice of the extra man or the demoted engineer available on the firemen's lists, and with refer-

ence to each of the three items covered by the mediation agreement of December 12, 1940.

CONCLUSION OF LAW.

It follows from what the Court has said, that relief, other than indicated, cannot be granted, and that the petition must be dismissed.

You will draw the order, Gentlemen, judgment to be okayed by the other side as to form, saving such exceptions as they may wish.

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93 NOTICE OF APPEAL.

Filed September 24, 1941.

To the Honorable United States District Court, the United States District Clerk, C. C. Huff, G. H. Penland, Touchstone, Wight, Gormley & Touchstone, Attorneys of Record for Defendants, Harold C. Heiss and T. D. Gresham, Attorneys of Record for Third party Defendant:

Notice is hereby given that General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad, plaintiff in the above styled and numbered cause, hereby appeals to the United States Circuit Court of Appeals for the Fifth Circuit from the final judgment entered on the 30th day of June, 1941, in favor of the defendants Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas and third party defendant General Grievance Committee of the Brotherhood of Locomotive Firemen and against plaintiff General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the.

Missouri-Kansas-Texas Railroad, which judgment reads as follows:

"This cause coming regularly on for trial before the Court, came all parties, General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad, plaintiff, Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, *Defendants*, and General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen, Third-Party Defendant, by their attorneys of record, respectively. The Court having heard the evidence and argument of counsel, and having made and entered of record its findings of fact and conclusions of law;

"1. It is Ordered and Adjudged that Plaintiff's complaint be dismissed on the merits;

"2. It is Decreed and Declared that Defendants were within their legal rights in negotiating with the Third-Party Defendant and in entering into the Mediation Agreement of December 12, 1940, which is valid and binding and does not violate the Railway Labor Act, or any other law, or infringe any right or agreements of the Plaintiff, or of the members, or any of them, of the craft of locomotive engineers;

"3. It is further Decreed and Declared that the Defendants had the right to negotiate with both of the other parties thereto as the duly designated representative of the respective crafts, and with either of them should the other decline to participate in said negotiation with reference to the passing of a man from the working lists of the firemen to the working lists of the engineers, and what should happen when an engineer, who was in the pool was absent with reference to the choice of the extra

man or the demoted engineer available on the firemen's lists, and with reference to each of the three items covered by the Mediation Agreement of December 12, 1940, *as made an issue by the pleadings.* (WmHA)
(in ink)

"4. All relief not herein expressly granted is hereby denied; and;

"5. Plaintiff shall pay the costs in this behalf incurred, as taxed by the clerk of the Court, for which let execution issue.

"To which action and ruling of the Court the Plaintiff then and there in open Court duly excepted.

"Dated June 30, 1941 At Dallas, Texas.
(Signed) WM. H. ATWELL,
United States District Judge."

Dated this the 24th day of September, A. D. 1941.

C. E. WEISELL,
J. W. MADDEN, JR.,
Attorneys for Plaintiff General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad.

The State of Texas,
County of Dallas.

I, George W. Parker, Clerk of the District Court of the United States for the Northern District of Texas, by Mary Conger, Deputy, hereby certify that on this day I mailed to C. C. Huff, G. H. Penland, Touchstone, Wight, Gormley & Touchstone, Attorneys of record for defend-

ants in this cause, and to Harold C. Heiss and T. D. Gresham, attorneys of record for third-party defendant in this cause, each, a true and correct copy of the foregoing Notice of Appeal in Civil Action No. 449, styled General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad vs. Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, defendants, and General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen, third-party defendant.

Given under my hand and seal of office this 24th day of September, A. D. 1941.

GEO. W. PARKER,
Clerk of the United States District Court for the Northern District of Texas, at Dallas.

(Seal)

By MARY CONGER,
Deputy.

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97 APPEAL BOND.

Filed September 24, 1941.

Know All Men By These Presents: That General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad, as Principal, and National Surety Corporation, a corporation, as Surety, are held and firmly bound unto Missouri-Kansas-Texas Railroad Company, a corporation, Missouri-Kansas-Texas Railroad Company of Texas, a corporation, and General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen in the full and just sum of Two Hundred Fifty Dollars ($250.00), to be paid to the said Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas and

General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen, to which payment well and truly to be made said parties do bind themselves, their successors and assigns, jointly and severally by these presents.

Whereas, lately, on the 30th day of June, A. D. 1941, in the matter of General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad vs. Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas and General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen, No. 449, Civil Action, pending in the District Court of the United States for the Northern District of Texas, at Dallas, Texas, a judgment was rendered in favor of the defendants Missouri-Kansas-Texas Railroad Company, a corporation, and Missouri-Kansas-Texas Railroad Company of Texas, a corporation, and third-party defendant General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen, and against the plaintiff General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad, reading as follows:

"This cause coming regularly on for trial before the Court, came all parties, General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad, *Plaintiff*, Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, *Defendants*, and General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen, Third-Party Defendant, by their attorneys of record, respectively. The Court having heard the evidence and argument of counsel, and having made and entered of record its findings of fact and conclusions of law;

"1. It is Ordered and Adjudged that Plaintiff's complaint be dismissed on the merits;

"2. It is Decreed and Declared that Defendants were within their legal rights in negotiating with the Third-Party-Defendant and in entering into the Mediation Agreement of December 12, 1940, which is valid and binding and does not violate the Railway Labor Act, or any other law, or infringe any right or agreement of the Plaintiff or the members, or any of them, of the craft of locomotive engineers;

"3. It is further Decreed and Declared that the Defendants had the right to negotiate with both of the other parties thereto as the duly designated representative of the respective crafts, and with either of them should the other decline to participate in said negotiation with reference to the passing of a man from the working lists of the firemen to the working lists of the engineers, and what should happen when an engineer, who was in the pool was absent with reference to the choice of the extra man or the demoted engineer available on the firemen's lists, and with reference to each of the three items covered by the Mediation Agreement of December 12, 1940, *as made an issue by the pleadings.* (WmHA) (in ink)

"4. All relief not herein expressly granted is hereby denied; and;

"5. Plaintiff shall pay the costs in this behalf incurred, as taxed by the clerk of the Court, for which let execution issue.

"To which action and ruling of the Court the Plaintiff then and there in open Court duly excepted.

"Dated June 30, 1941, at Dallas, Texas.

(Signed) WM. H. ATWELL,
United States District Judge."

and the said plaintiff General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad has filed notice of appeal from such judgment to the United States Circuit Court of Appeals for the Fifth Circuit, and such notice of appeal, in compliance with law, has been mailed to Messrs. C. C. Huff, G. H. Penland, and Touchstone, Wight, Gormley & Touchstone, attorneys for the defendants, and Messrs. Harold C. Heiss and T. D. Gresham, attorneys for third-party defendant:

Now, Therefore, the condition of the above obligation is such that, if the said General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad shall prosecute said appeal with effect and pay all costs if the appeal is dismissed or the judgment affirmed, or such costs as the Appellate Court may award if the judgment is modified, then the above obligation is to be void, otherwise to remain in full force and effect.

Dated at Dallas, Texas, this 24th day of September, A. D. 1941.

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE MISSOURI-KANSAS-TEXAS RAILROAD,

(Signed) By E. O. JOHNSON,
General Chairman, Principal.

NATIONAL SURETY CORPORATION,

(Seal) By T. M. DELANOY,
Attorney in fact, Surety.

National Surety Corporation.

Know All Men By These Presents, that National Surety Corporation, a Corporation duly organized and existing under the laws of the State of New York, and having its principal office in the City of New York, N. Y. hath made, constituted and appointed, and does by these presents make, constitute and appoint T. M. Delanoy of Dallas and State of Texas its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, contracts of indemnity and other conditional or obligatory undertakings; provided, however, that the penal sum of any one such instrument executed hereunder shall not exceed Two Hundred Thousand ($200,000.00) Dollars—and to bind the Corporation thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the common seal of the Corporation and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in the premises. Said appointment is made under and by authority of the following provisions of the By-Laws of National Surety Corporation:

"Article XII, Resident Officers and Attorneys-In-Fact.

"Section 1. The President, Executive Vice-President or any Vice-President may, from time to time, appoint Resident Vice-Presidents, Resident Assistant Secretaries and Attorneys-in-Fact to represent and act for and on behalf of the Corporation and the President, Executive Vice-President or any Vice-President, the Board of Directors or the Executive Committee may at any time suspend or revoke the powers and authority given to any such resident Vice-President, Resident Assistant Secretary or Attorney-in-Fact, and also remove any of them from office.

"Section 4. Attorneys-in-Fact. Attorneys-in-Fact may be given full power and authority, for and in the name and on behalf of the Corporation, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts of indemnity and other conditional or obligatory undertakings, and any and all notices and documents canceling or terminating the corporation's liability thereunder, and any such instrument so executed by any such Attorneys-in-fact shall be as binding upon the corporation as if signed by the President and sealed and attested by the Secretary.

"Section 7. Attorneys-in-Fact. Attorneys-in-Fact are hereby authorized to verify any affidavit required to be attached to bonds, recognizances, contracts of indemnity, or other conditional or obligatory undertakings, and they are also authorized and empowered to certify to copies of the By-laws of the Corporation or any Article or Section thereof.

In Witness Whereof, National Surety Corporation has caused these presents to be signed by its Vice-President, attested by its Assistant Secretary, and its corporate seal to be hereto affixed this 27th day of May, A. D. 1937.

NATIONAL SURETY CORPORATION,

(Seal)

By S. G. DRAKE,
Vice President.

Attest:
A. N. MacDOUGALL,
Assistant Secretary.

State of New York,
County of New York, ss.

On this 27th day of May, A. D. 1937 before me personally came S. G. Drake—to me known, who, being by me duly sworn, did depose and say, that he resides in the City

of New York; that he is Vice President of National Surety Corporation, the Corporation described in and which executed the above instrument; that he knows the seal of said Corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation and that he signed his name thereto by like order. And said S. G. Drake further said that he is acquainted with A. N. MacDougall and knows him to be an Assistant Secretary of said Corporation; and that he executed the above instrument.

M. M. MILLER,
Notary Public.

State of New York,
County of New York, ss.

I, H. Hussenetter Resident Assistant Secretary of National Surety Corporation, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said National Surety Corporation, which is still in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Corporation, at the City of New York, N. Y., this 12 day of September, A. D. 1941.

(Signed) H. HUSSENETTER,
(Corporation Seal) Resident Assistant Secretary.

Filed September 24, 1941.

105 DESIGNATION OF CONTENTS OF RECORD ON APPEAL.

Filed September 24, 1941.

To George W. Parker, Clerk of the United States District Court for the Northern District of Texas, C. C. Huff, G. H. Penland, Touchstone, Wight, Gormley & Touchstone, Attorneys of Record for the Defendants, and Harold C. Heiss and T. D. Gresham, Attorneys of Record for Third-Party Defendant:

General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad, Plaintiff in the above styled and numbered cause, hereby designates and requests the Clerk to incorporate in the transcript of record on appeal to the United States Circuit Court of Appeals for the Fifth Circuit in the above styled cause the complete record and all the proceedings and evidence in this action, and especially:

1. Plaintiff's Complaint, filed April 10, 1941;

2. Motion to make the General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen a third-party defendant, filed May 1, 1941;

3. Order granting motion of defendants to make the General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen a third-party defendant, dated April 30, 1941, filed May 1, 1941.

4. Answer and Cross-Complaint of Defendants, filed May 1, 1941;

5. Stipulation, filed May 22, 1941;

6. Order extending time to plead, dated May 22, 1941;

7. Plaintiff's First Amended Complaint, filed May 16, 1941;

8. Waiver of Service of Plaintiff's First Amended Complaint, filed May 16, 1941;

9. Stipulation, filed May 27, 1941;

10. Order on Stipulation, filed May 27, 1941;

11. Answer of Third-Party Defendant, filed May 31, 1941;

12. Defendants' First Amended Answer to Plaintiff's First Amended Complaint and Answer to the Original Answer of Third-Party Defendant, filed June 7, 1941;

13. Stipulation, filed June 11, 1941;

14. Order on Stipulation, filed June 11, 1941;

15. Plaintiff's Reply, filed June 8, 1941;

16. Final Judgment, dated and filed June 30, 1941;

17. Opinion of the Court;

18. The Court's Findings of Fact and Conclusions of Law;

19. Notice of Appeal, with date of filing and certificate of mailing;

20. Appeal Bond;

21. Designation of Contents of Record on Appeal, with certificate of service thereof;

22. Stipulation of Counsel.

Two copies of the Reporter's transcript of the evidence and proceedings included in this designation are filed herewith.

C. E. WEISELL,
J. W. MADDEN, JR.,
Attorneys for Plaintiff General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad.

The State of Texas,
County of Dallas.

I, George W. Parker, Clerk of the District Court of the United States for the Northern District of Texas, by Mary Conger Deputy, hereby certify that on this day I mailed to C. C. Huff, G. H. Penland, and Touchstone, Wight, Gormley & Touchstone, attorneys of record for defendants in this cause, and Harold C. Heiss and T. D. Gresham, attorneys of record for third-party defendant in this cause, each, a true and correct copy of the foregoing designation of contents of record on appeal in cause No. 449, Civil Action, styled General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad, vs. Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas, and General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen.

Given under my hand and seal of office this 24 day of September, A. D. 1941.

GEO. W. PARKER,
Clerk of the United States District Court for the Northern District of Texas, at Dallas.

(Seal)

By MARY CONGER,
Deputy.

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108 STIPULATION OF COUNSEL.

Filed September 29, 1941.

It is hereby stipulated and agreed by and between, plaintiff, defendants, and third-party defendant in the above entitled and numbered cause, by and through their respective attorneys of record, as follows:

That the undersigned attorneys for defendants and third-party defendant acknowledge that they each received from George W. Parker Clerk of the United States District Court for the Northern District of Texas, a true and correct copy of the notice of appeal and designation of contents of record on appeal which were filed by plaintiff in the above cause in the United States District Court on the 24th day of September, A. D. 1941. That they each waive all requirements of law with reference to service thereof on them, or the respective parties to said cause represented by them, and agreed that the reporter's transcript of the evidence, which was filed at the time of the filing of the said designation, is correct, and that by such designation plaintiff has designated for inclusion the complete record and all the proceedings and evidence in the above entitled and numbered action.

That notwithstanding the provisions of Rule 24 of the United States Circuit Court of Appeals for the Fifth Circuit, plaintiff shall file its brief at least fifty days before the date on which this case is assigned for argument and at said time furnish defendants and third-party defendant with copies thereof, and defendants and third-party defendant shall file their respective briefs at least fifteen days before the date on which this cause is assigned for argument and at said time furnish plaintiff and each other with copies thereof.

C. E. WEISELL,
J. W. MADDEN, JR.,
Attorneys for Plaintiff.
C. C. HUFF,
G. H. PENLAND,
TOUCHSTONE, WIGHT,
GORMLEY & TOUCHSTONE,
By LUCIAN TOUCHSTONE.
Attorneys for Defendants.
HAROLD C. HEISS,
T. D. GRESHAM,
Attorneys for Third-Party
Defendant.

113 STATEMENT OF EVIDENCE.

Filed September 24, 1941.

In the District Court of the United States Northern District of Texas, Dallas Division.

General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad, an Unincorporated Association.

vs. No. 449 Civil.

Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railway Company of Texas, A Corporation, and General Grievance Committee of Brotherhood of Locomotive Firemen and Enginemen, Third Party Defendants.

Be It Remembered that on the 25th day of June, A. D. 1941, before the Honorable William H. Atwell, United States District Judge the following proceedings were had in the above styled and numbered cause:

Appearances:

J. W. Madden, Jr., Dallas, Texas, C. E. Weisell, Cleveland, Ohio, for the plaintiff.

C. C. Huff, Dallas, Texas, J. H. Penland, Dallas, Texas, Touchstone, Wight, Gormley & Touchstone, Dallas, Texas, for the defendants.

T. D. Gresham, Dallas, Texas, Harold C. Heiss, Cleveland, Ohio, for General Grievance Committee of Brotherhood of Locomotive Firemen and Enginemen, Third Party Defendants.

(After oral statement of case by counsel for the parties the following testimony was introduced.)

114 E. O. JOHNSON, a witness for the plaintiff, being first duly sworn, examined in chief by Mr. Madden, testified as follows:

Q. State your name, please?
A. E. O. Johnson.
Q. Where do you live?
A. 691 North Bishop Street, Dallas, Texas.
Q. Are you connected in any way with the plaintiff in this case, the general committee of adjustment of the brotherhood of locomotive engineers for the MK&T?
A. I am general chairman for the General Committee of Adjustment for the MK&T.
Q. How many members are there on the general committee?
A. Eight local chairmen and one general chairman, making nine on the committee all told.
Q. How many divisions are there on the Katy Railroad, throughout its entire system?
A. You mean divisions or districts?
Q. Well, districts, seniority districts?
A. There are nine.
Q. The local chairmen that you refer to, how are they selected?
A. They are selected by a referendum vote of the membership of the local lodges, or divisions, we call them.
Q. By local lodges, you mean the Brotherhood of Locomotive Engineers?
A. Yes, sir.
Q. How are you selected as chairman of the general committee?
A. By a majority vote of the members of the general committee.
Q. The general committee of adjustment of the Brotherhood of Locomotive Engineers for the MK&T Railroad, has been the recognized representative of the craft of en-

gineers for approximately how many years, to your knowledge?

A. More than forty years, to my knowledge.

Q. This general committee of adjustment is an unincorporated association, is it not?

A. Yes, sir.

Q. And is the same true with reference to the Brotherhood of Locomotive Engineers?

A. Yes, sir.

Q. The plaintiff, the general commitee of adjustment, represents the craft of engineers in collective bargaining entering into agreements, rules and regulations, and rate of pay, is that correct?

A. Yes, sir, for engineers.

Q. For engineers, and have done that over a long period of time?

A. Yes, sir.

Q. There is also a craft known as the firemen's craft, is there not?

A. Yes, sir.

Q. Now, what are the duties, briefly, of the general committee, the Plaintiff in this case?

A. To make rules, rates and working conditions, agreement with the management of the carrier, and handle differences that may arise between the carrier and the craft, the engineers or its members.

Q. The local chairmen, briefly, what are their duties?

A. They handle the differences that exist between the local officials, and the engineers craft, or members, on their particular seniority districts.

Q. Did the Plaintiff enter into an agreement with the carrier with reference to working conditions, rules and rates of pay, on or about the first of October, 1918?

A. Yes, sir; the agreement is dated October 1, 1918.

Q. With some interpretations, modifications, or additional agreements, has that agreement remained in effect from October 1, 1918, to date?

A. Yes, sir.

Q. I hand you Plaintiff's Exhibit 1, which purports to be an agreement between the carrier and the plaintiff; is that a printed copy of the agreement that was adopted and made effective October 1, 1918?

A. Yes, sir.

The Court:

These are all admitted in the pleadings.

Mr. Madden:

They say they are without knowledge.

Mr. Madden:

We offer in evidence this agreement.

(Marked "PLAINTIFF'S EXHIBIT No. 1".)

United States Railroad Administration
Director General of Railroads

Missouri, Kansas & Texas Railroad

Missouri, Kansas & Texas Railroad
of Texas

Wichita Falls & Northwestern Railroad

Agreement
Between the
Missouri, Kansas & Texas Railroad

Missouri, Kansas & Texas Railroad of Texas

and

Wichita Falls & Northwestern Railroad

and

The Brotherhood of Locomotive Engineers, Governing wages and Working Conditions of all Engineers Employed by said Railroad Companies.

Effective October 1, 1918.

Articles 10, 34, 35, 38, 43, 44, 66 and 77, as follows:

Article 10: Engineers in through freight service will be run first in, first out, and if run around at terminals through no fault of their own, they will receive one day's pay, and will be placed behind other engineers in their

assigned service. This not to apply to engineers held in compliance with the Hours of Service Law.

If an engineer is run around in terminals after being called, he will be paid 100 miles and be permitted to continue his trip.

If a regularly assigned engineer is not called for his turn and loses a trip, he will be paid for all time or mileage made by his turn.

The Company will not assign through freight engineers to regular runs unless satisfactory to the majority of the engineers of the District affected.

Article 34: The rights to regular engines, also the right and preference to regular runs will be governed by seniority in service on the respective districts to which engineers may be assigned.

No freight run or yard engine of less than six days per week will be considered for regular assignment and engineers on all such assignments will be paid for all work days not used. Five days' notice will be given before road service of this kind is inaugurated or terminal is changed. It is understood that fixture switch engineers hold seniority only in yard service.

Article 35: Should service be reduced preference of runs will be governed by seniority on the respective district; when any run is created or vacant on district, the senior engineer on such district will have the right to such run. Should he decline to accept it, or fail to ask for it within ten days, after such vacancy occurs, he will forfeit his right to such run until it again becomes vacant, and it will be open to each engineer who is younger in service in accordance with above provisions.

A run will be vacant when terminal is changed to the extent of two miles or more, or when vacated by the engineer holding it, or when the regular time or mileage is changed to the extent of 10% or lay over changed as much as four hours.

Article 38: General Regulations.

We affirm the right to make and in interpret contracts, rules rates and working agreements for locomotive engineers shall be vested in the regularly constituted committees of the Brotherhood of Locomotive Engineers.

Article 43: (a) Firemen shall rank on the Firemen's roster from the date of their first service as firemen when called for such service except as provided in Section (K), and when qualified shall be promoted to positions as engineers in accordance with the following rules:

(b) Firemen shall be examined for promotion according to seniority on the Firemen's roster, and those passing the required examination shall be given certificates of qualifications, and when promoted shall hold their same relative standing in the service to which assigned.

(c) If for any reason the senior eligible fireman or engineer to be hired is not available and junior qualified fireman is promoted and used in actual service out of his turn, whatever standing the junior fireman so used established shall go to the credit of the senior eligible fireman or engineer to be hired, provided the engineer to be hired is available and qualified within thirty days. As soon as the senior fireman or engineer to be hired is available, as provided herein, he shall displace the junior fireman, who shall drop back into whatever place he would have held had the senior fireman to be promoted

or engineer to be hired been available and the junior fireman not used.

Qualification, as referred to herein, is not intended to include learning of road or signals.

(d) As soon as a fireman is promoted he will be notified in writing by the proper official of the company of the date of his promotion, and unless he files a written protest within sixty days against such date, he cannot thereafter have it changed. When a date of promotion has been established in accordance with regulations such date shall be posted and if not challenged in writing, within sixty days after such posting, no protest against such date shall afterwards be heard.

(e) No fireman shall be deprived of his rights to examination, nor to promotion in accordance with his relative standing on the firemen's roster, because of any failure to take his examination by reason of the requirements of the company's service, by sickness, or by other proper leave of absence; provided that upon his return he shall be immediately called and required to take examination and accept proper assignment.

(f) The posting of notice of seniority rank, as per Section "D", shall be done within ten days following date of promotion and such notice shall be posted on every bulletin board of the seniority district on which the man holds rank.

(g) Firemen having successfully passed qualifying examination shall be eligible as engineers. Promotion and the establishment of a date of seniority as engineer, as provided herein, shall date from the first service as engineer, when called for such service, provided there are no demoted engineers back firing. No demoted engineer

will be permitted to hold a run as fireman on any seniority district while a junior engineer is working on the engineers' extra list of holding a regular assignment as engineer on such seniority district.

(h) On a seniority district where firemen are required to fire less than three years, all engineers will be hired:

If required to fire three and less than four years, one promoted and one hired.

If required to fire four and less than five years, two promoted and one hired.

If required to fire five and less than six years, three promoted and one hired.

If required to fire six and less than seven years, four promoted and one hired.

If required to fire seven and less than eight years, five promoted and one hired.

On seniority districts where firemen are required to fire eight years or more, all engineers will be promoted.

The foregoing will not prevent committees from having discharged engineers re-employed or re-instated on their former seniority districts at any time.

(i) If the engineer to be hired is not available when needed and the senior qualified firemen is promoted, the date of seniority thus established shall fix the standing of the hired engineers who, if available and qualified within thirty days from date senior qualified fireman is promoted, will rank immediately ahead of the promoted fireman. The promoted fireman will retain his date of

seniority as engineer and will be counted in proportion of promotions.

(j) In case an engineer is hired and used in actual service, when, under the requirements of Section (h), a fireman, or firemen, should have been promoted the date of seniority thus established shall fix the standing of the senior qualified fireman, or firemen, due to be promoted, provided he or they are eligible and qualify within thirty days, who shall rank immediately ahead of the hired engineer on the engineers' seniority list. The hired engineer will retain his date of seniority and be counted in proportion of engineers to be hired.

(k) The seniority date of the hired engineers shall be the date of his first service as engineer, except as provided in sections (c), (i) and (j) of this Article. It is further provided that engineers hired or permanently transferred from one seniority district to another or any railroad, shall be given a date of seniority as firemen corresponding with their date as engineers.

Article 44: (a) When from any cause it becomes necessary to reduce the number of engineers on the engineer's working list on any seniority district, those taken off may, if they so elect, displace any fireman their junior on that seniority district under the following conditions:

First. That no reductions will be made so long as those in assigned or extra passenger service are earning the equivalent of 4,000 miles per month; in assigned pooled or chain-gang freight or other service paying freight rates, are averaging the equivalent of 3,200 miles per month; on the road extra list are averaging the equivalent of 2,600 miles per month.

Second: That when reductions are made they shall be in reverse order of seniority.

(b) When hired engineers are laid off on account of reduction in service, they will retain all seniority rights, provided they return to actual service within thirty days from the date their services are required.

(c) Engineers taken off under this rule shall be returned to service as engineers in the order of their seniority as engineers, and as soon as it can be shown that engineers in assigned or extra passenger service can earn the equivalent of 4,800 miles per month; in assigned pooled, chain-gang or other regular service paying freight rates, the equivalent of 3,800 miles per month, or in extra service the equivalent of 3,000 miles per month.

(d) In the regulation of passenger or other assigned service, sufficient men will be assigned to keep the mileage or equivalent thereof within the limitations of 4,000 and 4,800 miles for passenger and 3,200 and 3,800 miles for other regular service as provided herein. If, in any service, additional assignments would reduce earnings below these limits, regulations will be affected by requiring the regular assigned man or men to lay off when the equivalent or 4,800 miles in passenger or 3,800 miles in other regular service has been reached.

(e) Under this rule it is understood that after all engineers who have been taken off have been returned to service as engineers, this rule shall not apply with respect to further additions.

(f) No more engineers will be assigned than are necessary to move the traffic with promptness and dispatch. This will be determined by the Master Mechanic or proper official, and a Committee of the Engineers to the satisfaction of the official and the engineers affected. This not to apply until after the above provisions of this Article have been fulfilled.

(g) The Railroad will furnish the Local Chairman of the B. of L. E. with a check of the earnings of men, in

miles and hours, of the engineers in pooled, chain-gang and extra freight service, each pay period.

(h) Seniority list will be posted by the Company January 1st and June 1st of each year.

Article 66: Any ruling made with reference to any of the Articles enumerated herein will be made only by the officials signing this Agreement and will be made in writing and General Chairman of the Engineers' Committee will be furnished copy of said ruling, but said ruling shall not be made effective until agreed to between the parties herein mentioned.

Article 77: The foregoing rates and rules where effected by Supplement No. 24 to General Order Numbered 27, became effective December 1st, 1919. Other rules effective October 1st, 1918; no change in this agreement nor any departure therefrom will be made by either party hereto without thirty (30) days' notice in writing thereof served on the other party.

for

MISSOURI, KANSAS & TEXAS RAILROAD,
C. N. WHITEHEAD,
General Manager.

for

MISSOURI, KANSAS & TEXAS RAILROAD OF TEXAS,
WICHITA FALLS & NORTHWESTERN RAILROAD,
W. A. WEBB,
General Manager.

for

THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS,
E. O. JOHNSON,
Chairman, General Committee of Adjustment.

Mr. Madden:

If Your Honor, please, I have quite a lot of documentary evidence here in the form of letters. I have made copies of them, and I have given the defendant and the Third Party defendant notice to produce them. I am wondering if we could make a stipulation about these letters; it might save time in putting them in the record.

The Court:

Suppose you put them in, and then if you find there is anything in them that should not be in, you can take it out, they are in for all parties.

Mr. Madden;

Shall I go through the procedure of proving that he wrote the letters, and all of that?

Mr. Wight:

We waive any formalities with reference to the matter.

Mr. Heiss:

Do we retain an objection to the relevancy, is that the understanding?

The Court:

Well, I am just assuming that he would not offer anything that doesn't bear on the case.

Mr. Madden:

If it is not relevant, I do not want it in here.

The Court:

No, I do not think so, I wouldn't think either of you would want it in. I am anxious to save all of the time possible, is the only thing. There does not seem to be very much difference between you gentlemen in the state-

ment of the case, you are pretty well together on the facts.

Mr. Madden:

I think so, I think these letters will largely establish those facts.

The Court:

Mr. Wight's statement, and Mr. Gresham's, do not differ very much with reference to the facts.

Mr. Madden:

It is a mere matter of explaining some of the details.

The Court:

They say they did deal with the firemen, and that is the matter you complain of.

Mr. Madden:

I first offer in evidence a letter dated November 29, 1938, addressed to Mr. E. O. Johnson, from Mr. F. W. Grace.

(Marked "Plaintiff's Exhibit No. 2", as shown on page 21 of this statement of facts.)

The Court:

If you are going to put them in one at a time, there is no way to do except to read them, and if it is not relevant, we don't want it in. I thought you were going to put the letters in all at once, and go on to something else.

Mr. Madden:

If Your Honor please, these letters tell the whole story.

The Court:

Don't they agree with you, if so, why make a great big record, because somebody might have to appeal.

Mr. Madden:

They probably enlarge upon it, and the pleadings are the ultimate results, these letters will tend to prove and construe some of the agreements that are in evidence.

The Court:

If they agree with the result as you believe it, then that is all there is to it, you don't have to prove up the various steps of reaching the ultimate fact which you plead. You complain, as I understand it, that the carrier here—stating it quite summarily—negotiated with the firemen for engineers positions, which you claim, which negotiations you claim, should have been with the engineers, that is all there is to it.

Mr. Madden:

That is correct.

The Court:

Why not go on from that point?

Mr. Madden:

If these can all be considered in the record, I would not want any question about not having these letters in the record, in view of the shape of the pleading.

Mr. Wight:

As a suggestion, or an agreement, if any party considers he needs any of this correspondence, it may be incorporated in the record.

The Court:

Just put them all in, then when we come to argument, if there is any dispute comes in, you can refer to your letter, and that will save a good deal of time.

Mr. Madden:

I offer all of these letters as Plaintiff's Exhibit No. 2.

(Plaintiff's Exhibit 2, as follows:)

130 PLAINTIFF'S EXHIBIT 2.

Denison, Texas, June 8, 1932.

Mr. W. E. Williams, Manager,
Department of Personnel,
St. Louis, Missouri.

Dear Sir:

My opinion has been requested on the following case:

A demoted engineer, assigned as fireman on regular passenger run, operating between San Antonio and Waco, with San Antonio the home terminal. The firemen on these runs have lay overs at certain intervals during each month, when a swing man makes a trip on their run, allowing the regular assigned firemen to be off at these times for approximately three days. If, for any reason, this regular assigned fireman would happen to be at Waco, the away from home terminal of his run, during the time he is taking his lay over, would he be subject to call for an emergency trip as an engineer, for service originating at Waco when there were other emergency engineers located at Waco and available?

It is my opinion that a demoted engineer in this case would not be subject to call in emergency for service

originating at Waco on his lay over trip any more than he would on the days on which his run was in Waco. It has never been the practice to hold a demoted engineer off of his run at the away from home terminal for the purpose of exercising his seniority as an emergency engineer

Will you kindly give me your opinion on proper method of handling a case such as above cited? This in order that I may give reliable information or interpretation of the case referred to me.

Yours truly,
(Signed) E. O. JOHNSON,
General Chairman, Bofle,
MKT.

132 PLAINTIFF'S EXHIBIT 2-a.

Dallas, Texas, June 15, 1938.

Mr. F. W. Grace,
Vice President-General Manager,
Missouri-Kansas-Texas Lines,
Dallas, Texas.

Dear Sir:

I find that there is a different understanding, or a lack of uniformity in the handling of demoted engineers or calling demoted engineers for emergency service at away from home terminal.

This is a matter that has been handled to some extent in the past and was pending with Mr. W. E. Williams when he retired and left in an unsettled condition. It is my view that some, if not all, of the irregularity existing in this connection at the present time, is due to what I believe were contradictory instructions put out by Mr. Williams causing time claims to be made and other irregularities to exist, which I think could be eliminated if this matter

were discussed and an understanding reached and proper instructions issued by you requiring uniform handling.

I would be glad to discuss this with you at our first opportunity.

Yours very truly,
(Signed) E. O. JOHNSON,
General Chairman, Bofle,
MKT.

133 PLAINTIFF'S EXHIBIT 2-B.

St. Louis, June 25, 1932.

Mr. E. O. Johnson,
General Chairman, BofLE,
Denison, Texas.

Dear Sir:

Replying to yours of June 8th:

A demoted engineer should not be used under conditions recited by you, except in case of strict emergency where no extra engineer is available or can be made available.

Yours truly,
(Signed) W. E. WILLIAMS.

134 PLAINTIFF'S EXHIBIT 2-C.

Denison, Texas, June 30, 1932.

Mr. W. E. Williams, Manager,
Department of Personnel,
St. Louis, Missouri.

Dear Sir:

With further reference to my letter to you on June 8th. and your reply on June 25th, concerning the question

of using a demoted engineer at Waco who is assigned as a fireman on a regular passenger run operating between San Antonio and Waco, with San Antonio the home terminal.

I note you state that a demoted engineer should not be used under conditions cited by me, except in cases of strict emergency where no engineer is available or can be made available.

I don't believe you understood the questions submitted to you in my letter of June 8th. I understand, of course, that no emergency man should be used in any case where it is possible for an extra engineer to be made available. The question that I asked was, should an emergency man be considered available for emergency use at the away from home terminal of his run under any circumstances, if there were other emergency engineers actually available who were junior to the one who was away from his home terminal.

Will you please advise?

Yours truly,
(Signed) E. O. JOHNSON,
General Chairman, BofLE,
MKT.

135 PLAINTIFF'S EXHIBIT 2-D.

St. Louis, July 11, 1932.

Messrs:

T. F. Gardner,
G. C. Byers,
J. H. Little,
E. E. Hanna,
D. C. Dobbins,
C. W. Watts.

Recently a demoted engineer with home terminal at San Antonio, who was spending his lay-off period at his

home, Waco, was called for service as yard engineer at Bellmead.

We have agreed that such calls will not be made under similar conditions in future and that a demoted engineer at away-from-home terminal will not be called for service, except in real and bona fide emergency, i. e. unless no other engineer is available, either extra or emergency, qualified for the service.

Please be governed accordingly and acknowledge.

Yours truly,
(Signed) W. E. WILLIAMS.

cy—
Messrs. E. C. Johnson,
F. P. Loughridge.

Would be glad if you would acquaint your men with this ruling so there might be no misunderstanding in this connection in future.

W. E. W.

136. PLAINTIFF'S EXHIBIT 2-E.

Saint Louis, July 22, 1932.

Mr. E. O. Johnson;
General Chairman, BofLE,
Denison, Texas.

Dear Sir:

I addressed letter to Superintendents under date of July 11, 1932, with reference to demoted engineer with home terminal at San Antonio who was spending his lay-off period at his home in Waco, being called for service on yard engine at Bellmead.

Would be glad to have your acknowledgment of copy of the letter sent you and to know if the arrangement outlined is in all respects satisfactory.

Yours truly,
(Signed) W. E. WILLIAMS.

137 PLAINTIFFS' EXHIBIT 2-F.

Denison, Texas, July 28, 1932.

Mr. W. E. Williams, Manager,
Department of Personnel, MKT,
St. Louis, Missouri.

Dear Sir:

With reference to question of whether or not a demoted engineer is available for call as an emergency engineer at the away from home terminal of his regular assignment as fireman, and your ruling of July 11, 1932, addressed to all Superintendents on the railroad, with copy to Mr. F. P. Loughridge and myself and your letter to me on July 22nd, in which you ask that I acknowledge copy of your ruling and advise if arrangement outlined is satisfactory to me.

I wish to advise that your ruling is entirely in line with my views on the manner in which cases of this kind have been handled in the past and should be handled in the future. Will state further that the one case at Waco on May 24, 1932, in which demoted engineer W. T. McCaul was used is the only case to my knowledge that has ever been handled in this way and I am informed that Mr. Loughridge, Acting General Chairman, BofLF&E, was in Waco at the time of this particular handling and caused McCaul to be called for this trip.

I wish to thank you for the instructions issued by you in your letter of July 11th and to request that Superin-

tendents, crew dispatchers, and others in charge of handling the men be instructed to refrain in the future from taking instructions or interpretations or interpretations from representatives of the Firemen's organization as to calling or placing engineers.

Yours truly,
(Signed) E. O. JOHNSON,
General Chairman, BofLE,
MKT.

139 PLAINTIFFS' EXHIBIT 2-G.

Dallas, Texas, November 29, 1938.

2539-44-N

Mr. E. O. Johnson,
General Chairman,
Brotherhood of Locomotive Engineers,
621 North Bishop Avenue,
Dallas, Texas.

Dear Sir:

Referring to your letter of June 15, and to our conferences concerning the handling of demoted engineers for emergency service for service at away from home terminals.

In accordance with our conference of November 16, we will, in order to clear up apparent misunderstandings and in the interest of uniformity call engineers for such service as follows:

"Where engineer cannot be secured from extra board in the usual manner and the use of emergency engineer if required, the senior demoted engineer, when such is available, the home terminal of whose run or assignment

is at the point where the service is required or required to begin will be used."

If you will indicated your approval of this, or suggestions for clearer wording of the instructions, we will instruct our people accordingly.

Yours very truly,
(Signed) F. W. GRACE.

140 PLAINTIFFS' EXHIBIT 2-H.

Dallas, Texas, December 3, 1938.

Mr. F. W. Grace,
Vice President-General Manager,
Missouri-Kansas-Texas Lines,
Dallas, Texas.

Dear Sir:

This will acknowledge your letter of November 29th, file 2539-44-N, referring to past correspondence and discussion in your office November 16th, in an effort to bring about uniform handling regarding the use of emergency engineers and especially with reference to emergency engineer to be used at the away from home terminal and away from where extra board is maintained where regular assigned extra engineers cannot be secured. I note, in the third paragraph of your letter, you propose the manner in which this should be handled.

I am agreeable to your suggested method for future handling and the language used by you, in my opinion, is sufficiently clear to enable a uniform understanding by all concerned. I, therefore, wish to request that you issue these instructions to all concerned, furnishing me with copy and on receipt of same I will furnish copies to all Local Chairmen of the BofLE. In this way we should

be able to get a uniform handling and overcome a number of controversies that have existed in the past.

Yours truly,
(Signed) E. O. JOHNSON,
General Chairman, BofLE,
MKT.

141 PLAINTIFFS' EXHIBIT 2-I.

Missouri-Kansas-Texas Lines

Operating Department

F. W. Grace,
Vice President and General Manager.

E. D. Winslow,
Asst. to Vice President and General Manager.

Dallas,—December 14, 1938.

2539-44-N

Messrs.
D. C. Dobbins,
C. W. Watts,
F. H. Schaller,
J. J. Gallagher,
H. W. Davidson:

In order that a uniform understanding may be had concerning the use of demoted engineers at away from home terminals for what is commonly termed emergency service, the following has been approved by Brotherhood of Locomotive Engineers and is to be observed:

Where engineer cannot be secured from extra board in the usual manner and the use of emergency engineer is

necessary the senior demoted engineer (when such is available) the home terminal of whose run or assignment is at the point where the service is required or required to begin will be used.

Please acknowledge receipt.

(Signed) F. W. GRACE.

cc—Mr. E. O. Johnson,
General Chairman,
Brotherhood of Locomotive Engineers,
621 North Bishop Ave.,
Dallas, Texas.

Refers to your letter of December 3.

(Signed) F. W. GRACE.

143 PLAINTIFFS' EXHIBIT 2-J.

Missouri-Kansas-Texas Lines

Operating Department

F. W. Grace,
Vice President & General Manager.

E. D. Winslow,
Asst. to Vice President and General Manager.

Dallas—May 1, 1939.

2539-44-N

Messrs.
C. W. Watts,
F. H. Schaller,
J. J. Gallagher,
H. W. Davidson,
C. W. Campbell:

Referring to my letter of December 14, outlining uniform practice in the use of demoted engineers at away

from home terminals for what is commonly termed emergency service.

Question has arisen as to the procedure to be followed under the following circumstances:

"Fireman on freight run is a demoted engineer. At the away from home terminal engineer on this run is obliged to lay off. The senior demoted engineer available, with home terminal at that point, is junior to the fireman (who is a demoted engineer) who arrives on the run at the away from home terminal point."

In providing engineer for the return of this run under circumstances outlined, the fireman (demoted engineer) arriving on the run at point where engineer laid off, would be used as engineer on the return trip; and fireman provided in the usual way to relieve the man used as engineer.

Please acknowledge receipt.

(Signed) F. W. GRACE.

cc—Mr. E. O. Johnson,
General Chairman,
Brotherhood of Locomotive Engineers
621 North Bishop Ave.,
Dallas, Texas.

145 PLAINTIFFS' EXHIBIT 2-K.

Saint Louis, April 24, 1929.

Mr. E. O. Johnson,
General Chairman, BofLE,
1000 W. Morgan St.,
Denison, Texas.

Dear Sir:

Superintendent Dobbins advises that Local Chairman Hilliard makes the following suggestion in connection with the handling of extra engineers:

"In compliance with instructions from Division 475 BofLE to put in effect ruling made by our General Chairman to the effect of changing our mode of handling our engineers when it becomes necessary to use emergency engineers when we have engineers on the pool board when our extra board has been exhausted, which ruling is as follows:

"When there are no extra engineers available (and we have pool crews on the pool board) instead of using emergency (or demoted engineers) you are requested to use the first engineer on pool board and to move the engineer (following the engineer so used) to position made vacant on the pool board by the engineer moved up."

Please advise if there are any objections to placing this practice in effect.

Yours truly,
(Signed) W. E. WILLIAMS.

146 PLAINTIFFS' EXHIBIT 2-L.

E. O. Johnson, Chairman
1000 W. Morgan St.
Denison, Texas

General Committee of Adjustment

Brotherhood of Locomotive Engineers

Missouri-Kansas-Texas Railway System

Denison, Texas, May 8, 1929.

Mr. W. E. Williams, Manager,
Department of Personnel, MKT,
St. Louis, Missouri.

Dear Sir:

This will acknowledge your letter of April 24th, in which you quote letter Superintendent Mr. Dobbins has received from Local Chairman A. M. Hilliard at Smithville, requesting that where there are no extra engineers available and there are pool crews on pool board, instead of using emergency engineers that the regular pooled engineers be used by setting them up to the next turn ahead, etc. You ask if I have any objections to placing this practice into effect.

It is my view that emergency vacancies of this kind in pool through freight service should be filled by the engineers assigned to this service rather than use an emergency man. This of course should not apply to vacancies in any other class of service, and, as above stated should be confined to emergency cases and all other vacancies should be regulated by not permitting engineers to lay off except where there are extra engineers to fill their places, if there is a sufficient number of engineers as-

signed to properly take care of the extra work. If a sufficient number is not assigned, such assignment should be made as soon as it is known that there are not a sufficient number assigned, keeping in mind, of course, the mileage limitations in the Working Agreement.

Yours truly,

(Signed) E. O. JOHNSON,
General Chairman, BofLE,
MKT.

148 PLAINTIFFS' EXHIBIT 2-M.

St. Louis—May 14, 1929.

Mr. D. C. Dobbins:

Referring to your 306 of April 20th, regarding the handling of engineers.

There are no objections to your request that where there are no extra engineers available and there are pool crews on the pool board, that instead of using emergency engineers, the regular pool engineers will be used by setting them up to the next turn ahead, etc.

Emergency vacancies of this kind in pool through freight service should be filled by engineers assigned to this service rather than to use emergency men. This not to apply to vacancies in any other class of service, and should be confined to emergency cases and all other vacancies regulated by not permitting engineers to lay off, except where there are extra engineers to fill their places, if there is a sufficient number of engineers assigned to properly take care of the extra work. If a sufficient number is not assigned, assignment should be made as soon as it is known that there are not sufficient number assigned, keeping in mind the mileage limiations of the agreement.

Yours truly,

(Signed) W. E. WILLIAMS.

149 PLAINTIFFS' EXHIBIT 2-N.

Dallas, Texas, February 19, 1938.

Mr. F. W. Grace,
Vice President-General Manager,
Missouri-Kansas-Texas Lines,
Dallas, Texas.

Dear Sir:

I am in receipt of the following letter addressed to Mr. M. C. Vanston and signed by Superintendent Dobbins at Smithville:

"Handling of Pool Turn Engineers.

'The practice of moving pool turn engineers up instead of using a demoted engineer, when extra engineers are not available, will be discontinued, effective at once. When you have a pool turn vacancy and do not have any extra engineers available, you will use the senior available demoted engineer.

"Care must be taken in the handling of the pool turn engineers and extra men with regard to mileage limitations, as prescribed by the working agreement.

"Kindly acknowledge receipt and understanding."

These instructions were protested by Local Chairman Fitzwilliam to Superintendent Dobbins and Fitzwilliam was advised that these instructions came from you and the matter has been referred to me for handling further with you.

It is my view that your instructions in this connection are in violation of Article 10 of Engineers Agreement, the first sentence of which reads:

"Engineers in through freight service will be run first in, first out."

We do not consider through freight engineers as being on regular assigned runs or positions the same as local, passenger or yard engine, but that they are simply in a pool to run first-in first-out with each other to handle the irregular freight service when the railroad desires to move a train of this kind. The mileage permissible under the Schedule rule is adjusted by taking engineers off or putting them on this pool as the business fluctuates to keep the mileage that can be made in this class of service between the maximum and minimum provided for in the agreement.

The Working Agreement does not provide for the use of emergency engineers except in real cases of emergency and where there are no available engineers for the class of service to be handled. It is, therefore, my position that, under the rule quoted, you have no right to use an emergency engineer so long as there are available through freight engineers or extra engineers.

We adopted the policy a number of years ago at Smithville of moving pool engineers up to avoid the use of emergency engineers because of the excessive amount of emergency engineers used, due to the particular conditions that existed at that place. After handling in this way for some time the practice was discontinued and a year or two ago conditions arose again under which an unusual amount of emergency engineers were being used, to the extent that we were unable to make proper adjustments of the mileage that extra engineers could make, due to the fact that emergency engineers were getting an unreasonable amount of mileage that belonged to the regular assigned extra men. There have been times on other parts of the Railroad where this same arrangement has been necessary in the past and in fact it has been done and is

still being done to some extent on the Division between Bellmead, Ft. Worth and Dallas and the railroad, as well as the men, have derived considerable benefits from this arrangement. It has been recognized during the entire life time of our present schedule, which was made effective October 1, 1919, that this practice was in line with Schedule provisions and no representative of the Railroad has ever before questioned this interpretation of our rules.

It is my view that in issuing the instructions to discontinue this practice under our rules is a violation of Article 66 of Schedule reading:

"Any ruling made with reference to any of the Articles enumerated herein will be made only by the officials signing this Agreement and will be made in writing and General Chairman of the Engineers' Committee will be furnished copy of said ruling but said ruling shall not be made effective until agreed to between the parties herein mentioned."

For the reason that you have placed an entirely new interpretation on a long standing recognized rule and that you did not make such interpretation in writing and that you did not furnish me, as General Chairman, with copy of same and you had your new interpretation put into effect without discussing the matter with me; all of which I contend is a violation of the above quoted article. I further contend that it is a violation of Article 38 of Engineers' Schedule, reading:

"We affirm the right to make and interpret contracts, rules; rates and working agreements for locomotive engineers shall be vested in the regularly constituted committees of the Brotherhood of Locomotive Engineers."

I, therefore, wish to request that you kindly withdraw your instructions in this connection and permit the re-

establishment of the long standing practice of operating pool freight engineers at Smithville. If you do not see fit to change these instructions that you arrange to meet me as soon as possible for the purpose of discussing the matter further in an effort to reach a mutual understanding of same, and that I be given at least a days advance notice of the date of such meeting so that I can arrange to have Local Chairman Fitzwilliam present at the conference. If you care to do so, I would be very glad to have superintendent Dobbins present at the conference also.

Will you please advise?

Yours truly,

(Signed) E. O. JOHNSON,
General Chairman, BofLE,
MKT.

153 PLAINTIFF'S EXHIBIT 2-O.

Missouri-Kansas-Texas Lines

Operating Department

Dallas, Texas, April 21, 1938.

2549-N

Mr. E. O. Johnson,
General Chairman,
Brotherhood of Locomotive Engineers,
621 North Bishop Avenue,
Dallas, Texas.

Dear Sir:

Referring to your letter of February 19, 1938, concerning the handling of pool board engineers at Smithville.

We have restored the former arrangement in effect at Smithville in accordance with the general terms of the engineers' schedule and the interpretation placed thereon by Mr. Williams in 1929.

Yours very truly,
(Signed) F. W. GRACE.

154 PLAINTIFF'S EXHIBIT 2-P.

Denison, Texas, April 4, 1923.

Mr. W. E. Williams,
Manager Personnel,
St. Louis, Mo.

Dear Sir:

I have just received information that some of the Superintendents on this Railroad have a different understanding to what I have of your instructions that, effective first day of this month Superintendents will take over the handling and assignment of engineers, in so far as making adjustment of extra board and through freight list in taking men off and putting them on, in accordance with Article 44 of Engineers' Schedule, and the fluxuation of business. It is the understanding of some of the Superintendents that the Local Chairman are to continue to handle the list of pool through freight engineers and extra engineers the same as they have in the past, and that Superintendents or their representatives are to have nothing to do with this except furnish the Local Chairman with check of the mileage made by each engineer.

This is not my understanding of your statements to us in conference, as I understood you desired Superintendents to handle this part of the placing of the men the

same as all other assignments, and, I, therefore, wish to request that you make this matter clear to the various Superintendents in so far as the engineers are concerned.

Will you please advise?

Yours truly;

(Signed) E. O. JOHNSON,
General Chairman, BofLE.

cc:
Messrs:
M. O. L.
W. L. B.
E. R. B.

156 PLAINTIFFS' EXHIBIT 2-Q.

Missouri-Kansas-Texas Lines

Department of Personnel

W. E. Williams,
Manager.

Saint Louis, April 10, 1923.

Mr. E. O. Johnson,
General Chairman, BofLE.,
Denison, Texas.

Dear Sir:

I have yours of April 4th advising that some of the Superintendents on this railroad have a different understanding than you of our instructions that effective April 1st Superintendents will take over the assignment and handling of engineers, insofar as making adjustment of extra board and through freight lists in taking men off and

putting them on in accordance with Article 44 of Engineer's schedule.

You do not mention where this misunderstanding exists but the intent of the instructions we have issued is that Superintendents will take over the assignment and handling of men in accordance with the existing agreement between the BofLE and the Railroad. I am handling with Superintendents along this line.

Yours truly,
(Signed) W. E. WILLIAMS.

157 PLAINTIFFS' EXHIBIT 2-R.

Dallas, Texas, December 19, 1940.

2539-44-N

Mr. E. O. Johnson,
General Chairman,
Brotherhood of Locomotive Engineers,
621 N. Bishop Avenue,
Dallas, Texas.

Dear Sir:

Referring to conference of December 16, at which was discussed the agreement made in 1929 whereby at Smithville, Texas, vacancies on pool freight board, when the extra board is exhausted, are filled by advancing men on the pool freight boards.

Will you please consider this as a notice under Section 6 of the Railway Labor Act, as amended June 21, 1934, of the desire of the railroad to cancel the arrangement and agreement referred to above, and that vacancies on the pool board when extra board is exhausted, will be filled by calling the senior demoted available engineer, as generally prevails on the railroad.

We shall appreciate your advice as to a date for the discussion of this notice, as provided for in the Railway Labor Act.

Yours very truly,
(Signed) F. W. GRACE.

158 PLAINTIFFS' EXHIBIT 2-S.

Dallas, Texas, December 19, 1940.

2539-44-N

Mr. E. O. Johnson,
General Chairman,
Brotherhood of Locomotive Engineers,
621 N. Bishop Avenue,
Dallas, Texas.

Dear Sir:

Referring to our conference of December 16, at which was discussed the question of agreements made under date of December 14, 1938, as follows:

"Dallas, December 14, 1938.

2539-44-N

"Messrs.
D. C. Dobbins,
C. W. Watts,
F. H. Schaller,
J. J. Gallagher,
H. W. Davidson:

"In order that a uniform understanding may be had concerning the use of demoted engineers at away from

home terminals for what is commonly termed emergency service, the following has been approved by Brotherhood of Locomotive Engineers and is to be observed:

"Where engineer cannot be secured from extra board in the usual manner and the use of emergency engineer is necessary the senior demoted engineer (when such is available) the home terminal of whose run or assignment is at the point there the service is required or required to begin will be used.

"Please acknowledge receipt.

(Signed) F. W. GRACE.

"CC: Mr. E. O. Johnson,
621 N. Bishop,
Dallas, Texas."

and of May 1, 1939, as follows:

"Dallas, Texas, May 1, 1939.

2539-44-N

"Messrs.
C. W. Watts,
F. H. Schaller,
J. J. Gallagher,
H. W. Davidson,
C. W. Campbell:

"Referring to my letter of December 14, outlining uniform practice in the use of demoted engineers at away from home terminals for what is commonly termed emergency service.

"Question has arisen as to the procedure to be followed under the following circumstances:

" 'Firemen on freight run is a demoted engineer. At the away from home terminal engineer on this run is obliged to lay off. The senior demoted engineer available, with home terminal at that point, is junior to the fireman (who is a demoted engineer) who arrives on the run at the away from home terminal point.'

"In providing engineer for the return of this run under circumstances outlined, the fireman (demoted engineer) arriving on the run at point where engineer laid off, would be used as engineer on the return trip; and fireman provided in the usual way to relieve the man used as engineer.

"Please acknowledge receipt.

(Signed) F. W. GRACE.

"cc: Mr. E. O. Johnson,
621 N. Bishop,
Dallas, Texas."

Will you please consider this as a notice, under Section 6 of the Railway Labor Act, as amended June 21, 1934, of the desire of the railroad to cancel the arrangements and agreements referred to above and that the senior demoted engineer available on the district shall be used for filling vacancies, where it is not possible to provide men from engineers' extra boards in the usual manner.

We shall appreciate your advice as to a date for the discussion of this notice, as provided for in the Railway Labor Act.

Yours very truly,
(Signed) F. W. GRACE.

161 PLAINTIFFS' EXHIBIT 2-T.

Missouri-Kansas-Texas Lines

Operating Department

Dallas, Texas, December 27, 1940.

2539-44-N

Mr. E. O. Johnson,
General Chairman,
Brotherhood of Locomotive Engineers,
621 North Bishop Ave.,
Dallas, Texas.

Dear Sir:

Referring to conference December 27, in connection with our letter of December 19, giving notice of the desire of the railroad to cancel agreements as set forth in letters of December 14, 1938, and May 1, 1939, concerning the calling of men for "emergency" engineer's service.

Confirming the understanding had December 27, we are agreeable to conference on this matter 10:00 A. M., January 8, 1941.

Yours very truly,
(Signed) F. W. GRACE.

162 PLAINTIFFS' EXHIBIT 2-U.

Dallas, Texas, January 13, 1941.

Mr. F. W. Grace,
Vice President-General Manager,
Missouri-Kansas- Texas Lines,
Dallas, Texas.

Dear Sir:

With reference to our conference held in your office today regarding your notice of cancellation of agreement, as contained in your letter, dated December 19, 1940, file 2539-44-N.

This is to advise that we are not willing to cancel this agreement.

Yours truly,
(Signed) E. H. KRUSE,
Ass't Grand Chief Engineer
Brotherhood of Locomotive Engineers.

cc: E. O. Johnson,
Chairman BofLE.

163 PLAINTIFFS' EXHIBIT 2-V.

Missouri-Kansas-Texas Lines

Operating Department

F. W. Grace,
Vice President & General Manager.

E. D. Winslow,
Asst. to Vice President & General Manager.

Dallas, Texas, February 3, 1941.

2539-44-N

Mr. E. O. Johnson,
General Chairman,
Brotherhood of Locomotive Engineers,
621 North Bishop Ave.,
Dallas, Texas.

Dear Sir:

Referring to my letter of December 19, 1940, addressed to yourself and General Chairman McKemy of the Brotherhood of Locomotive Firemen & Enginemen, concerning the difficulties and controversies in connection with the handling of engineers' boards. This is to advise that in line with mediation agreement A-838, of which you have been supplied a copy, that we are issuing the following instructions to our forces.

"Effective with operations beginning February 1, the following is to be observed in handling of engineers working lists, under the mileage regulations in engineers' agreement.

"Boards will be adjusted on the basis of the mileage check for the previous pay roll period as soon as the semi-monthly mileage check is issued:

"Boards will remain with the assignments as made under this check, until they require adjustment by reason of subsequent mileage checks; except

"Adjustments of boards intermediate to the issuance of mileage checks may be made where there is definite knowledge of substantial change in conditions which justify deviation from the assignments required under the mileage check.

"In local application, these instructions are modified to the extent and in the manner that may be jointly agreed to between local representatives of the engineers and firemen.

"To be made effective with the issuance of the mileage check for the first payroll period of February."

Yours very truly,
(Signed) F. W. GRACE.

165 PLAINTIFFS' EXHIBIT No. 2-W.

Cliff Towers Hotel

Dallas, Texas, February 28, 1941.

Case NMB A-910.

Mr. F. W. Grace, Vice Presdt. & Genl, Mgr.,
Missouri-Kansas-Texas Lines,
Dallas, Texas.

Mr. E. H. Kruse, Ass't. Grand Chief Engr.,
Brotherhood of Locomotive Engineers,
Baker Hotel,
Dallas, Texas.

Gentlemen:

On January 14th, 1941, the Brotherhood of Locomotive Engineers by its duly authorized representative made application in due form and in accordance with the provisions of the Railway Labor Act for the services of the National Mediation Board in the following dispute:

"Management's request to cancel certain agreements with the BofLE."

This dispute was assigned for mediation to the undersigned and has been the subject of mediation proceedings, without composing the differences or securing verbal consent to arbitrate. The mediator therefore, now makes written request and again urges that you enter into an agreement to arbitrate under the provisions of the Railway Labor Act. In making your written reply, which is requested at your earliest convenience, please enclose a copy of your letter which will be sent to the other party as advice of your determination in the matter.

Kindly address your reply to the undersigned at the Cliff Towers Hotel, Dallas, Texas.

Very truly yours,
(Signed) JOHN W. WALSH,
Mediator, National Mediation Board.

167 PLAINTIFFS' EXHIBIT 2-X.

Missouri-Kansas-Texas Lines

Operating Department

F. W. Grace,
Vice President & General Manager.

E. D. Winslow,
Asst. to Vice President & General Manager.

Dallas, Texas, March 24, 1941.
2539-44-N

Mr. E. H. Kruse,
Assistant Grand Chief Engineer,
Brotherhood of Locomotive Engineers,
Brotherhood of Locomotive Engineers Building,
Cleveland, Ohio.

Dear Sir:

Referring to our two letters to Mr. Johnson dated December 19, 1940, being notices of our desire to cancel certain agreements made with the Brotherhood of Locomotive Engineers covering:

(1) the filling of vacancies on pool boards;

(2) the calling of demoted engineers at away from home terminal points for what is commonly termed "emergency" service;

and upon which matters your organization invoked the services of the National Mediation Board; covered by the Board's file A-910.

Reference is made to letter of March 13, 1941, of Secretary Cole of the National Mediation Board serving notice on behalf of the Board that its services were on that date terminated in this case.

In view of this notice, this is to advise you that the railroad intends to consider its notices of cancellation of December 19, 1940, effective as of April 13, 1941; and the agreements covered by them canceled as of that date.

Will you kindly acknowledge receipt.

Yours very truly,
(Signed) F. W. GRACE.

cc-Mr. E. O. Johnson,
General Chairman,
Brotherhood of Locomotive Engineers,
621 North Bishop St.,
Dallas, Texas.

169 PLAINTIFFS' EXHIBIT 2-Y.

Fort Dodge, Iowa, April 2, 1941.

2539-44-N

Mr. F. W. Grace, Vice-Pres. & Gen. Mgr.,
Missouri-Kansas-Texas Lines,
Dallas, Texas.

Dear Sir:

With further reference to your letter of March 24, 1941 and my reply to same under date of March 27, 1941 regarding the notice of cancellation of certain agreements

made with the Brotherhood of Locomotive Engineers and listed in your letter of March 24, 1941 as cases (1) and (2); also the intention of the railroad to consider its notices of cancellation of December 19 1940, effective as of April 13, 1941; and the agreements covered by them canceled as of that date. This to advise we protest the cancellation of the agreements.

Yours very truly,
(Signed) E. H. KRUSE,
Assistant Grand Chief Engineer Brotherhood of Locomotive Engineers.

170 PLAINTIFFS' EXHIBIT 2-Z.

Missouri-Kansas-Texas Lines

Operating Department

F. W. Grace,
Vice President & General Manager.

E. D. Winslow,
Asst. to Vice President & General Manager.

Dallas, Texas, April 4, 1941.

2539-44-N

Mr. E. H. Kruse,
Assistant Grand Chief Engineer,
Brotherhood of Locomotive Engineers,
Cleveland, Ohio.

Dear Sir:

Your letter from Fort Dodge, Iowa, April 2, 1941, concerning ours of March 24th and your reply of the 27th about notice of cancellation of certain agreements.

We have noted your protest against the cancellation referred to. This, we understand, is a renewal of the protest made previously, and was the basis of your appeal to the Mediation Board, regarding which the Board was unsuccessful in effecting a settlement; and about which they have informed us of the termination of their efforts.

We regret the Board did not find it possible to effect some settlement of the matter. We are obliged to say that it is our intention to proceed as set forth in our letter of March 24, 1941, to you.

Yours very truly,
(Signed) F. W. GRACE.

cc-Mr. E. O. Johnson,
General Chairman,
Brotherhood of Locomotive Engineers,
621 North Bishop Ave.,
Dallas, Texas.

Mr. Gresham:

May I inquire if the letters there are copies of those letters.

The Court:

Well, it seems that he has copies attached to each one of the letters.

Mr. Madden:

Yes, and it is my plan to give them a copy. I think I have two copies of both of them.

(By Mr. Madden):

Q. Now, then, Mr. Johnson, the agreement that was entered into between the plaintiff and the defendant carrier with reference to calling the Emergency Engineers generally, explain how that rule operates with reference to away from home terminals?

A. That rule provided for calling the oldest available demoted engineer whose home terminal was at the point where the emergency arose.

Q. Now, I believe the record here will show that that was the rule adopted about 1932; as far as anything in writing is concerned; did it exist prior to that time?

A. It was practiced with a few exceptions prior to that time, but there was no specific agreement between the carrier and the engineers, provided.

Q. What was the reason for that rule, as a practical matter, in operating these engines?

A. The reason why that was, first, there is nothing definite on it prior—no definite record how that would be done prior to 1932, and there was irregularities on the demoted engineers were called in cases of emergency, and this agreement or understanding was reached to provide a uniform handling.

Q. Now, is that generally the rule over the Katy system with reference to emergency engineers where you do not have any engineers on the extra board?

A. Yes, that was generally applied after the rule was made, generally applied that way, as I say, with some few exceptions, which usually brought about the controversy between the railroad and the organization.

Q. Does this rule, the application of it, have anything to do with showing how, or under what conditions, the emergency engineer shall work, except while he is working as engineer?

A. No, it only provides for when and how he will be called for emergency service as engineer.

Q. Now, you have what is known as a working list, is that correct?

A. Yes, sir.

Q. What makes up what constitutes the working list?

A. The working list, ordinarily, is a group or pool of engineers working in through freight, or unassigned freight service, what is called a pool assignment. Working

first in and first out, that is, one working list. There are several different kinds of working lists, that is what is usually referred to as a working list.

Q. The working list, is that or is that not the list under which the engineers work for the carrier?

A. Yes, sir.

Q. Now, do you have several kinds of working lists?

A. Yes.

Q. Do you have a working list where there are assigned runs on passenger or freight service?

A. Yes, we have working lists where engineers are assigned to regular passenger runs. We have working lists where they are assigned to what is known as local or mixed freight runs. We also have some who are assigned to special freight service runs. That usually is a one-man list. In many instances, the local services or one-man list. We also have occasionally working lists known as work trains. We also have a working list of engineers assigned to yard engines.

Q. Now, those working lists that you have been talking about, are merely lists that give the name of the engineer and the particular run that he is assigned to, is that correct?

A. Yes, sir.

Q. Then, in addition to that, and in connection with those assigned runs, do you have what is called an extra list?

A. Yes, sir.

Q. Is that a list solely of engineers?

A. Yes, sir.

Q. How does that list operate with reference to your assigned list? That is, how do you operate it in connection with these men on assigned runs? When do the extra men commence to perform service as engineers?

A. The usual extra list that we have is extra freight lists, to do all of the extra work on all of the freight assignments, including yard engines. This list is usually

assigned at the home terminal, work first in first out with each other to fill the different vacancies in freight and yard service over the entire seniority district, unless there is an outlying point to make sufficient extra work to make an assignment of the list at that place.

Q. You also have as a part of the working list, what is known as a pool board, do you not?

A. That is the ordinary freight list assigned and unassigned freight service.

Q. Is that a list giving the name of the men and numbering them from one on down?

A. Yes, sir.

Q. And then in connection with that pool board as you call it, you have this extra board of engineers, is that correct?

A. Yes, sir.

Q. The men on that pool board, are they or are they not assigned to any particular run, or any particular train?

A. They are not.

Q. How do you mean, how do they work, you said first in and first out?

A. To illustrate that, we will call them 1, 2, 3, 4, and 5, and so forth, they are marked up on the board, usually where the chief caller's office is, or whoever is representing the railroad, and when an irregular freight train is ordered, the engineer first out is called to man that run and so on down. As one comes in off of a run, he is marked up behind the other engineers already in there on that pool, causing them to rotate first in first out, at all times.

Q. In other words, the first one to come in on a run is the first one to go out?

A. Yes, sir.

Q. Now, your extra board, how do the men work on that in connection with the pool board; for example, suppose a vacancy occurred in the pool board?

A. The extra board works in the same manner as the Pool Board, which is first in first out with each other, and they fill all freight vacancies that occur, either in yard or road service in their turn, off of that extra board, in the same manner that the pool engineers do in their turn on their board.

Q. Now, then, suppose generally, under the general rule that you have with reference to the calling of emergency engineers where there are no men on the extra board, or extra list, what procedure do you follow under the rule that was in effect in 1938?

A. Pardon me, please, I didn't catch that first part of the question, will you repeat it?

Q. Suppose that a vacancy occurs in the pool board, there are no men available on the extra list to fill that vacancy; generally over the system of the carrier, under the rule that was in effect in 1938, how would you fill that vacancy?

A. By calling the senior demoted engineer available.

Q. Now, then, I will ask you this question; explain to the Court how men, engineers, move up and down, that is, on the list from engineers one day to firemen the next day and back from firemen to engineers. How does that work, that fluctuates, of course, according to business, but briefly explain how that works, to the Court?

A. As stated by you, that fluctuates according to the business of the railroad, and is governed by Article 44, which provides, of the engineers scheduled, which provides the minimum and maximum mileage that an engineer can make in any class of service.

Q. I wish you would state in that connection where most of the engineers were recruited from, with reference to any other craft working for the carrier?

A. From the ranks of the firemen.

Q. What requirements do the railroads make before a fireman will be eligible to be an engineer?

A. They require a certain term of service as fireman first, and then require certain qualifying examinations, such as on air brakes, machinery and rules, and so forth.

Q. If the fireman passes—has worked the minimum time and has passed the examination, what else must he do before he becomes an engineer?

A. He must establish a date, seniority date, as an engineer, by being called for service as an engineer, when he is needed as such, either by being placed on the engineers extra board, or by making a trip in emergency after all of the senior engineers are in service as engineers.

Q. That is the way seniority is established, is it? And that is the working basis for the craft of engineers, is it not?

A. Yes, sir.

Q. The oldest man has preference as to the character of work he will do, as to the kind of a run he will make, is that correct, substantially?

A. Yes, sir, as to the kind of run he will be assigned to.

Q. Now, with reference to the agreement that was made in 1929, at Smithville, Texas, I wish you would detail to the Court how that agreement operated at Smithville while it was in effect, from 1929 up until the 13th day of April, 1940? Just explain to the Court how that differed in the matter of calling the emergency engineers for service with reference to the engineer freight pool at Smithville?

A. It differed to the extent that when the extra board was exhausted and there was a vacancy in pool service for an engineer, instead of calling an emergency engineer, the next out pool engineer would be set up to the vacancy.

Q. What do you mean when you say "set up"?

A. All right. We will say the first man out laid off, or got sick, or caused a vacancy for any reason, there was no available assigned extra engineers, the engineer

sent out would automatically become first out and be used on that vacancy that was made by the first man.

Q. What would the extra man do, when he came back in, then, with reference to whether or not he would take that place on the pool board or not?

A. If an extra man came in, and became available before the vacancy was filled, that was caused on the second turn by setting that man up to the first turn, the extra engineer would be cut in in that place; but if the extra engineer was not in in time to fill that vacancy, or succeeding vacancies, each engineer would be set up the same as the first one was, until such time as an assigned extra engineer was available, he then would be cut in on whatever vacancies existed at that time, and be permitted to make the trip the same as he would be had he been there for the first emergency.

Q. That rule differed at Smithville from the general rule that you have testified about, that was formally made, in 1938, and that had been in effect for years, with reference to calling—

The Court:

You have your dates wrong, Mr. Madden, if you want to keep the record straight.

Q. I will state the question over again. The rule at Smithville differed from the general rule which had been in effect for many years, and which was formally entered into and formally adopted, I believe December 14, 1939, that is correct, is it not?

A. Yes, sir.

Q. Explain to the Court why you had a different situation at Smithville, or a different rule there from the general rule over the remainder of the line?

A. We had difficulties at Smithville in making proper adjustments of extra boards due to engineers laying off and causing vacancies on the pool board at times, when

there was no extra engineer available. That was indulged in to such an extent that we were often using a number of the emergency engineers at times when the assigned engineers were not making the minimum mileage. Whereas, if we get all of the mileage that was there that really belonged to extra engineers to the work assigned extra engineers, we could maintain the list that we had, and in some instances, add another man to the list. In other words, we were trying to get the mileage service to the extra engineers instead of to the emergency engineers.

Q. Now, you have in your schedule and agreement as to the maximum and minimum mileage for the various classes of engineers, do you not?

A. Yes, sir.

Q. I wish you would state briefly those limitations as to maximum and minimum of the different classes of engineers?

A. Well, the minimum and maximum are contained in article 44, of the engineers schedule; and the minimum for passenger service is 4,000 miles and the maximum is 4,800 miles.

Q. This is per month, is it not?

A. Yes, sir, per month.

Q. Go ahead.

A. For a thirty-day period, to be exact. The minimum for freight service is 3,200 miles. The maximum is 3,800 miles. The minimum for extra men in freight service, and yard service, is 2,600 miles, and 3,000 maximum.

Q. Now, by the operation of the rule that was in effect at Smithville from 1929 until April 13, 1941, did you stay within those maximum and minimum limitations?

A. We endeavored to do so.

Q. Now, with reference to the working list generally, prior to the time this mediation agreement was entered into on December 12, 1940, the working list which you

have described, how were they handled with the carrier for eight or nine years prior to December 12, 1940?

A. Will you please state the question again?

Q. I will state it a little different and it will be clearer to you. For eight or nine years prior to December 12, 1940, the handling of the working lists with the MK&T Railroad Company, was that handled by the local chairman jointly with the local chairman of the Firemen's organization, or was it handled between the local chairman of the engineers association and the carrier?

A. Generally it was handled by the local chairman of the engineers, with some representative of the carrier.

Q. Is there anything that the firemen had to do with the engineers working list, they do not appear on the engineers working list; do they?

A. No, sir.

Q. Now, then, since the mediation agreement was entered into on December 12, 1940, at Smithville, Texas, has there been a change in the manner in which the working list was handled there?

A. Yes, sir.

Q. Has the carrier placed into effect changes of the rule at Smithville in addition to that, rule we have been talking about.

A. You mean the setting up—

Q. Setting up—

A. That rule has been changed, yes, sir.

Q. Has the general rule with reference to the calling for service of the emergency engineers been changed, and have you been given notice of a change by the carrier?

A. Yes, sir.

Q. I don't know whether it is exactly clear, as to how a change was effected in the handling of the working list at Smithville. Explain that a little more in detail as to whether or not the carrier has now required, a joint action

of the local chairman of each organization, before he will make any change in the list?

A. That is what has been done. The local chairman thinks that the Board should be increased or decreased, he will ask the representative of the Carrier to make the change that he thinks should be made. The carrier gets the concurrence of the local chairman of the firemen's organization before such change is made.

Q. Why are those changes made in the board, not at Smithville, but generally, why do you change the board, the working list from time to time; why is that necessary?

A. It is necessary due to the fluctuation of business of the railroad, and to comply with the mileage regulation rules. I mean by that, keep between the limitations, between the maximum and minimum, as near as possible.

Q. How are men added to or taken from the list, what procedure do you go through?

A. Generally speaking, they are governed by the check of the mileage that is received from the railroad, at each pay period, which is the 15th and 1st of the month. The check itself does not usually reach the local chairman before, short of four or five days after the time expires to do this checking. That keeps the local chairman, or whoever is handling men, posted on the mileage that has been made, and the business for the future sometimes governs the handling of the boards, because business may have suddenly picked up, or fallen off. All of those things are taken into consideration usually in adjusting boards.

Cross Examination.

By Mr. Wight:

Q. Mr. Johnson, do I understand that the situation at Smithville is now, the arrangement there, is the same as it is at the other places on the line?

A. Yes, sir.

Q. And uniform?

A. Yes, sir. That is, so far as the rules are concerned.

Cross Examination

By Mr. Heiss:

Q. Mr. Johnson, you refer to your promotion rule, and the mileage rule, which are articles 44 and 45 of your schedule?

A. 44 is the mileage rule.

Q. Which is the promotion rule?

A. 49, I believe it is—no,—

Q. 58?

A. No, 43, that is the promotion rule.

Q. Do you know if those rules are the same as appear in the Chicago Joint Agreement?

Mr. Madden:

I object to any matters pertaining to the Chicago Joint Agreement, because I take the position that the Chicago Joint Agreement was canceled and terminated, as stated by counsel in the opening statement, in 1927, and is, therefore, wholly immaterial to any issue in this case now. As I see it, it would shed no light on any issue in this case, what might have happened under the Chicago Joint Agreement in 1927, or between 1913 or 1927.

The Court:

All right. Do you want to ask your question?

Mr. Heiss:

Yes.

The Court:

Go ahead.

Q. Will you answer the question, please?

A. State the question again, please.

Q. Are your promotion rules and mileage rules, to which you referred, the same as those similar rules contained in the Chicago Joint Agreement?

A. Yes, sir; they are.

Q. Now, coming to—

A. Just a minute, please. Let me qualify that to this extent; they are identical with what was contained in the Chicago Joint Agreement, prior to 1923. They do not contain the revised joint working agreement that was agreed to in 1923, that was never applied on the MK&T Railroad.

Q. What was the difference between the 1918 and 1923 Chicago Joint Agreement, as far as the promotion and mileage rules are concerned?

A. There was some difference, if I remember correctly, what the 1923 agreement was. There was some difference in the mileage regulation rules, but I don't recall any at the present time in the promotion rules.

Q. Just in the form of mileage allowable to engineers each month?

A. If I remember correctly, I am not familiar with the 1923 agreement, because we never applied it on the railroad. If I remember correctly, there was some change in the mileage limitation of the extra men.

Q. Now, you have used the term "senior demoted engineer."

A. What is that?

Q. You have used the term "senior demoted engineer."

A. Yes.

Q. Where does he appear on the working list?

A. Where does his name appear on the working list?

Q. Yes.

A. It does not appear, we have no rules that I know of that causes him to appear.

Q. You have, on this railroad, a working list for engineers, do you not, on which the names of all engineers working as engineers are listed; you have a working list for firemen, have you not?

A. Yes, sir.

Q. Now, this senior demoted engineer's name will appear on one or the other of those lists, will it not?

A. Yes.

Q. Which list will it appear on?

A. While he is working as a fireman, it will appear on the firemen's list, as quick as he becomes an engineer, it appears on the engineers' list.

Q. When the senior demoted engineer is used, that demotes all of the senior engineers named on the firemen's working list?

A. Usually, it could be hired engineer and not appear there.

Q. How many hired engineers are on this railroad?

A. None at all, all are demoted at the present time, there has been in days gone by quite a lot of them, but they are all working as engineers at the present time, I think. I will qualify that, in the Texas Central and Wichita Falls and Northwestern District, there is a number of demoted out there on each one of those districts.

Q. By demoted, what do you mean?

A. That is cut off of the engineers' board, on account of reduction in service.

Q. And they are working as firemen, or not working at all?

A. That is right.

Q. How long has it been since you hired engineers on the Missouri, Kansas & Texas?

A. 1916 and 1917, I believe.

Q. Now, item 1 of the mediation agreement provides that when it is necessary to call a demoted engineer back firing, to perform service as an engineer, the senior available demoted engineer will be called. In what kind

of a job is the senior available demoted engineer then working?

A. If he is working at all, he is working as a fireman, hostler or hostler-helper.

Q. On this railroad, who represents hostlers and hostler-helpers?

A. The firemen's organization.

Q. Now, directing your attention to Smithville, Mr. Johnson, I think you testified there that there is a freight pool for engineers, an extra freight pool for engineers, and then what is the next list below that, as regards seniority?

A. Those are demoted engineers, they are back firing, or out of a job entirely, as the case may be.

Q. In other words, the next list below, as regards seniority is the firemen's working list, isn't it?

A. That is true, unless it is a hired engineer, who is out of a job entirely.

Q. Now, when a man lays off in the pool and an extra man is available, who is called to fill the vacancy in the pool?

A. The extra man.

Q. Now, in the event there are not enough extra men to handle the extra work, who is called to fill the extra man's job?

A. The demoted engineer, and in that case we assign more men to the extra board, if there is not enough to handle the work.

Q. Putting it another way; a man is taken from a fireman's working list and put on the extra board of engineers?

A. Always, when they are needed, if the next senior man is back firing and is not a hired engineer.

Q. Now, on this railroad a demoted engineer is also a fireman, is he not?

A. A fireman, when he goes back firing.

Q. Doesn't he retain seniority rights as a fireman, when he is promoted to be an engineer?

A. Oh, yes, regardless of how long he may be an engineer, under certain conditions.

Q. Isn't it possible that an engineer at the bottom of the engineer roster may, figuratively speaking, be working one day as an engineer, and the next day as a fireman?

A. That happens some time.

Q. That happens frequently, does it not?

A. Well, yes, sir, it happens every time that it is necessary to reduce the board, or every time it is necessary to increase the board. Somebody working as a fireman today, tomorrow they may put him on the extra engineer's board. The next week or the next month, on account of reduced business, it may be necessary to demote him or put him back again to firing.

Q. Are there occasions when emergencies occur where a man, a demoted engineer far down on the fireman's roster, may be called to serve as an engineer?

A. Yes, sir, that often happens.

Q. What brings about that condition?

A. An emergency.

Q. Will you explain how the emergency arises?

A. The emergency arises when there is a vacancy for any cause, that you have no regular assigned extra man to fill, then you get that senior demoted engineer and he may right at that time be away down the seniority list.

Q. And a number of these men to whom you refer as senior demoted engineers may be available for call, or may be working, so that to fill this need for an emergency engineer, there is a necessity to go comparatively far down the firemen's roster to get an engineer, is that right?

A. That happens when the senior men are not available for any cause.

Q. Now, Mr. Johnson, let us assume that an engineer, at the bottom of the engineers' senior roster, is demoted, where does he go?

A. If he is a demoted engineer, he goes back firing.

Q. Let me qualify that question; at the bottom of the engineer's regular list?

A. He goes back on the extra board.

Q. What happens to the man at the bottom of the extra board?

A. If there is not sufficient work to maintain another man on the extra board, he is cut off, and put back firing.

Q. Now, does that push everybody on the firemen's roster down one position, so to speak?

A. Naturally so.

Q. And what happens to the man at the bottom of the firemens' regular list?

A. Naturally cut off, and out of a job, just the same as a hired engineer would be if he was cut off of the engineers' board.

Q. Isn't it more accurate to say that the man at the bottom of the firemen's regular list would go to the bottom of the firemen's extra board?

A. That is right. It finally cuts the man off at the bottom.

Q. When that condition begins, when one engineer is moved down, it ultimately means one fireman gets out of a job?

A. In the end, yes, sir, except where it is a hired engineer, and in that case, he is out of a job, but it does not affect the firemen's list.

Q. Does your agreement provide that a hired engineer shall obtain seniority as a fireman?

A. If they went to running the engine after a certain time, those starting in as service, as an engineer, prior to that time, do not have any rights. Those hired prior to that time do not have any rights as firemen.

Q. That was contained in your agreement, I take it?

A. Yes, sir.

Q. So that, in substance, your agreement provides that engineers hired at a certain time may be, during a certain period, shall obtain seniority rights as firemen?

A. Yes, sir.

Q. As of a certain date?

A. Yes, sir.

Q. Now, let us refer to the situation in Smithville again; you picture a situation in which the first engineer in the pool laid off, under the agreement which you negotiated with the carrier, and which has since been canceled, the second man in the pool moves up to take the first man's position in the pool, if no extra engineer is available?

A. That is right.

Q. Now, in that pool, there is a first in first out practice, is there not?

A. Yes, sir.

Q. And that first in first out practice is also by virtue of a provision in your schedule of October, 1918?

A. Yes.

Q. Now, as between the No. 1 and No. 2 engineer, who was the first in?

A. As between the No. 1 and No. 2?

Q. Yes?

A. The No. 1 would naturally be first in.

Q. No. 2 would be second in?

A. Yes, sir.

Q. Now, if No. 1 lays off, your arrangements permit a No. 2 man to go first out?

A. That made him first out, in a sense, by the other fellow laying off.

Q. It permitted a No. 2 man to go first out, didn't it?

A. Yes, sir.

Q. That is not an application of the first in first out rule, is it?

A. It is my understanding of a literal application of the first in first out rule.

Q. If an extra engineer is available, who goes out when No. 1 lays off?

A. We permit him to go out, but in doing that, we have followed the literal first in first out rule with these pool engineers.

Q. So at one time you apply that literally, at another time you did not?

A. Most of the time we do, we never did, but when it comes down to the question of what constitutes first in first out, the case at Smithville and one other exception at Bellmeads, are the only cases I know of where we have lived literally up to the first in first out rule.

Q. Again, at Smithville, Mr. Johnson: This joint handling of the list between the engineers and firemen's local chairmen, when was that begun?

A. At Smithville?

Q. Yes.

A. Since February 1, 1941.

Q. I mean in the first instance, going back into the 20's?

A. That was done during the lifetime of the joint working agreement, so-called joint working agreement, to some extent. It was not done to the extent, to my knowledge, to the extent that it is being done now at Smithville.

Q. Wasn't there an understanding reached under date of March 28, 1923, in respect to the joint handling of the list?

A. No.

Q. I am referring to Item 2, of the mediation agreement, and I wish you would look at this letter quoted in the amended complaint, tell me if that is not a memorandum of the understading for the joint handling of the list entered into on March 28, 1923?

A. It was not so understood at that time, and was not followed, following that time.

Q. Mr. Johnson, I am really seeking light on this case In the first paragraph, I think, which was written by Mr. W. E. Williams, to Messrs. Levell, Anderson & Neiman, under date of March 28, 1923, it starts off with this, "This is to confirm the understanding in conference this morning, that in the handling of crews, superintendents will be governed by existing rules and agreements." And further, it says, "With the understanding that your local chairman will be instructed to get in touch with the superintendent?

A. That is right.

Q. You say that that was not the understanding at that time?

A. No, sir, I didn't say that. I say that that was not understood, that it would require a joint handling of the lists.

Q. Doesn't it provide for a joint handling of the list?

A. I don't understand so, and I was present when that agreement was made, I was general chairman and was in on that settlement.

Q. Who handled the lists then, during that period, according to your version?

A. The local chairman, prior to that time the local chairman of each organization. Since April 1, 1923, or immediately following, the railroads taking over the handling of the men April 1, 1923, the railroad handled that, the different lists, through the cooperation of the local chairmen of each organization.

Q. In other words, then, according to your understanding this provided for the railroad handling the list?

A. Entirely so.

Q. In accordance with existing rules and agreements?

A. Yes, sir.

Q. When, if ever, did the railroad cease to handle the list?

A. There was never, in so far as the engineers' organization is concerned, any agreement made between the

carrier and the engineers' representatives for the railroad to discontinue handling the list. They practically drifted out of the handling and allowed it to drift into the local chairman of each of the organizations, I believe, handling their own lists, so to speak.

Q. Of course, you did not answer my question. I think you got the answer in at the end of the answer. Sometime in 1937, was it, that the railroad permitted the handling of the lists to drift back into the hands of the local chairmen, is that correct?

A. I would not state from memory regarding that, because I am not sure. I will state this, however, there was lots of correspondence, and a number of conferences between the two organizations all the way along, from the time the railroad took over the handling of the men on April 1, 1923, on up until the present time.

Q. At least, some time prior to 1949, this drifting away from the railroad's handling of the list took place, is that right?

A. Yes, sir.

Q. Now, what is your understanding with reference to the application of the item 2 of mediation agreement, about handling of the list?

A. Which item 2? Quote item 2 for me, for my information.

Q. Surely. "Effective February 1, 1941, the carrier will apply the rules in the schedules governing the regulation of working lists in the same manner as contemplated by the letters of agreement dated March 28, 1923, and March 29, 1923, copies of which are attached hereto. It is understood that this method of adjusting the lists may be modified by actual agreement between the carriers, and the interstate organization."

A. Yes, sir, I am familiar with that, I know what that is.

Q. Maybe it will help you to read this.

A. I know that. I am familiar with it. Now, what is your question?

(Question read by the reporter.)

A. My understanding, that the railroad will take over the handling of the men, under the settlement made effective April 1, 1923.

Q. And that is the understanding that is contained in the March 28, 1923 letter, is it not?

A. Yes, sir.

Q. And that understanding of March 28, 1923, was an understanding between the carrier, Mr. Slovell representing the B of LE, and B of LFE, Mr. Anderson and Mr. Neiman's, was it not?

A. That is right.

Q. You have testified, Mr. Johnson, that certain agreements, as you call them, between the B of LE and the carrier were canceled upon notice of the carrier, given some time in 1940, or 1941, is that right?

A. Yes, sir, 1940, in December, I believe.

Q. December, 1940?

A. Yes, sir.

Q. Was that a thirty-day notice given to you under provisions of your schedule and under the Railway Labor Act?

A. Yes, sir.

Q. Following the giving of notice, were conferences held between the B of LE and the carrier in respect to the proposed cancellation?

A. Yes, sir.

Q. You participated in those conferences?

A. Yes, sir.

Q. Were you able to arrive at an agreement with the carrier as to whether they should be canceled or not?

A. What is that, I don't understand it.

Q. Were you able to arrive at an agreement with the carrier as to whether they should be canceled?

A. No, sir.

Q. Then what followed?

A. We invoke the aid of mediation.

Q. You mean the Brotherhood of Local Engineers?

A. Yes, sir.

Q. Was the mediator assigned?

A. Yes, sir.

Q. Did he suggest that the carrier and the engineers and firemen discuss this purposely in a joint conference?

A. Did he suggest what?

Q. Did he suggest that the carrier, the engineers and the firemen, discuss these proposed cancellations in joint conference?

A. I don't remember, I don't recall that he did.

Q. Didn't Mr. Thompson write you and the firemen's chairman a letter, proposing a joint conference to discuss these problems?

A. That was prior to the time you are talking about, that was before mediation.

Q. That was the letter of October 4, 1940?

A. Yes, sir.

Q. What was the result of mediation?

A. Which one are you on, now?

Q. I am on the last one.

A. Mediation failed.

Q. What followed after that?

A. Following that failure, the railroad notified us that on a certain date, April 13, I believe is the date that the changes would be made.

Q. In other words, your agreement was canceled?

A. Yes, sir.

Q. After that, the arrangement with the firemen went into force?

A. That is right.

Q. There was a fireman mediation that we referred to, in connection with it the mediator wrote a letter on October 4, 1940?

A. Yes, sir.

Q. There was then a suggestion made for a joint conference between the organizations and the carrier, was there not?

A. There was a suggestion in that letter made that the organization, I don't recall whether it embraced the railroad or not.

Q. Would you like to look at the letter and answer that question?

A. I have the letter in my pocket, here, I don't want to delay long enough to look at it.

Mr. Heiss:

This letter is not in the group offered by Mr. Madden, so I must go into this.

Mr. Madden:

I don't know what the purpose is.

The Court:

I don't know what it relates to, either. So far as I have been able to follow, it is a mediation upon some other matter.

Mr. Heiss:

It is the same general subject matter.

The Court:

All right.

A. I answered the question, as I recall it.

Q. I am merely trying to ascertain from you, Mr. Johnson, if all three parties were required to be present?

A. This suggested joint handling up here, I haven't taken time to read it all. Where is it, where it calls the railroad into it?

Mr. Heiss:
We will put the letter in later.

Q. Did you decline to join the conference with the firemen?

A. I have a wire to Mr. Johnson from San Antonio that I would not be agreeable to a meeting such as they proposed in this letter.

Q. Now, you had another mediation, did you not, following this one of October, 1940?

A. Had one before that with Mr. Thompson, and one after that with him.

Q. Now, the one that followed it?

A. The one that followed that?

Q. In connection with that, didn't the railroad propose a conference between all three parties in an endeavor to dispose of this controversy?

A. I don't know whether they did or not, they did not propose it to me.

Q. Didn't you get a letter to that effect?

A. Not prior to the mediation agreement.

Q. Following the mediation agreement?

A. Sure, following the mediation agreement.

Q. Is that the letter of December 19, 1940, written by Mr. Grace?

A. Addressed to Mr. McCamey and myself?

Q. Yes.

A. Yes, sir, I received a letter addressed to Mr. McCamey, suggesting a joint conference for the purpose of reaching a mutual understanding of certain things contained in the firemen's mediation agreement.

Q. You refused to join in that conference, too, didn't you?

A. I did.

Q. Referring again to Smithville; will a pool engineer be used to fill a vacancy on a yard engine at Smithville, when no extra engineer is available?

A. That was done a time or two and our rules did not require that at all, because that was a violation of our first in and first out rule, in this pool service.

Q. I want to understand that accurately. Your answer is that the pool engineer is not used except on rare occasions?

A. He is not supposed to be used, but there was a few cases where they called a road engineer, a pool freight engineer. On one case, I can recall where they called for a local engineer, and our arrangement did not provide for them, the railroad did that without any request on the part of the organization.

Q. In the vast portion of cases, the pool engineer was not used to fill the vacancy on the yard engine?

A. Was not used at all to fill the vacancy, under our agreement. He was used improperly for that service a time or two.

Q. Who was called in under the 1929 arrangement?

A. For the yard engines?

Q. Yes.

A. If there was no extra engineer available, an emergency engineer was called.

Q. By emergency engineer, you mean the man on top of the firemen's working list?

A. Yes, sir, if he was available, that is right.

Q. What is the average daily pay of a yard engineer at Smithville?

A. That would depend altogether on the class of engine they used in the service, our rates of pay vary due to the type of engines the company used.

Q. It runs about $8.00?

A. $8.05, usually, generally speaking about $8.00.

Q. That is the highest, is that right?

A. No, that is not the highest, we have engines that pay a higher rate than that, an engineer over a twenty-four inch cylinder, they are paid a through freight rate when they are in the yard.

Q. Now, this senior fireman on the working list, what kind of a job is he working on?

A. Sometimes he is a hostler, sometimes hired passenger runs, sometimes, a through freight run, and I have seen them firing switch engines, but not often.

Q. Let us take a passenger run, where will that run to?

A. Out of Smithville, it will go to Houston, another one goes to Galveston—another one goes to—there are three runs a week.

Q. How far is Houston from Smithville?

A. 114 miles.

Q. How far is Galveston?

A. Galveston is fifty miles further.

Q. How far is San Antonio?

A. San Antonio passenger runs do not operate out of Smithville.

Q. Take the Galveston run, this senior fireman working on the passenger run down to Galveston, does he run down there one day and back the next?

A. Yes, sir.

Q. How much does he make on that run?

A. I couldn't tell you, but he is paid by the mile. I am not familiar with the firemen's rate of pay.

Q. You can give us an approximation?

A. Well, let us see, it would be nine or ten dollars, possibly a little more.

Q. Each way?

A. Yes, sir.

Q. So a round trip, it would run $18.00 to $20.00?

A. That is approximately, yes, sir.

Q. You take the senior fireman, and put him on a switch engine, can he handle the passenger run that he might have had?

A. Can he do what?

Q. If you take the senior fireman, and assign him to a job as a switch engineer at Smithville, can he handle the passenger runs that he might have had from Smithville to Galveston and return?

A. Not usually.

Q. It is obvious that he cannot, isn't it?

A. It is not, so far as the engineer's rules are concerned. I believe the firemen have some rules that possibly would prohibit him from doing that, however, I would not be positive about that.

Q. I don't want to elaborate on that point, but isn't it true that a man cannot be on a job on a switch engine in Smithville, and handle one for Galveston?

A. Not at the same time, but they can make eight hours on a switch engine in many instances before the passenger run goes out, and could still go out on the passenger run, if there were not some restrictions.

Q. No more questions.

Re-Direct Examination.

By Mr. Madden:

Q. Now, if an emergency engineer is called to work—emergency engineer—a fireman—the work he performs is lost to the engineer on the extra list, is that right or not?

A. That is true under the arrangement we had at Smithville.

Q. In other words, when the fireman comes up, he must displace, under those circumstances, as an emergency engineer, some extra engineer's work, work that the extra engineer would have received?

A. Yes, sir.

Q. And, of course, that turned is lost to that particular extra engineer?

A. If the extra engineers are not making, not enough service for the extra engineers to be making more than the maximum, it is lost, and in that case, another engineer would be assigned to the Board.

Q. Approximately how many members, locomotive engineers, throughout the United States—I will withdraw that question. How many locomotive engineers throughout the United States are members of the Brotherhood of Locomotive Engineers, approximately?

A. Something over 61,000, I can't tell you the exact number at the present time.

Q. How many locomotive engineers are members of the Brotherhood of Locomotive Engineers, on the Katy Railroad?

A. How many are assigned as engineers?

Q. Yes.

A. Approximately two hundred and seventy-five.

Q. What is the percentage, in other words, of locomotive engineers, as compared to the total number of locomotive engineers working on the Katy; can you give us an approximate figure?

A. I will have to look. I have that figure here.

Q. All right.

A. The percentage of the total, total percentage of the engineers working on the list, the way I have it figured, is 78 percent plus, a fraction over 78 percent.

Q. Is that the present situation you are testifying about?

A. It may not be the situation today, I would say around the first part of this month.

Q. Well, would you say that approximately that same situation has existed?

A. Yes, sir, it is very close to the same situation today.

Q. During the last year, would you say approximately that same situation?

A. Yes, sir, somewhere near that.

Q. Can you give the total number of engineers, on the seniority list?

A. There is 438 that have made a seniority date under the terms of the working agreement. Both the engineers and firemen.

Q. How many of that number are members of the brotherhood of Locomotive Engineers?

A. There are 289.

Q. Is that approximately 66 percent?

A. Yes, sir.

Q. And these other figures, from which you arrive at that percentage, the total number of engineers working on the list, is what, 348, is that correct?

A. You mean assigned as engineers?

Q. The total number of engineers working?

A. The total number of engineers working is 348.

Q. Now, how many of those are members of the Brotherhood of Locomotive Engineers?

A. Approximately 273, I believe that is exactly.

Q. And that figures around 79 percent?

A. 78 plus, the way I figure it.

Q. And would you say that substantially that same condition has existed over a period of a year?

A. Approximately so, it has varied from time to time, to some extent.

Q. Mr. Heiss asked you about this letter, that was entered into—a joint settlement between the four brotherhoods about the 28th of March, 1923. Now, subsequent to that, a few days after that, did you enter into an agreement with the carrier, construing or interpreting that agreement, in so far as, only the engineers were concerned?

A. I did.

Q. And as a result of that agreement, so far as the engineers organization was concerned, the matter was to be, these working lists, were to be handled separately be-

tween the local chairmen for the engineers, and the carrier, is that correct?

A. That was my understanding of Mr. Williams letter to me dated April 10, 1923.

Mr. Heiss:

I wonder if I may have the Court's indulgence, going back to another one of these agreements, I think it will save some time later on.

The Court:

All right.

Re-Cross Examination.

By Mr. Heiss:

Q. Mr. Johnson, there is pleaded in the amended complaint, an agreement of December 14, 1938, which provides, where an engineer cannot be secured from the extra board in the usual manner, and the use of emergency engineer is necessary, the senior demoted engineer, when such is available, or whose run or assignment is at the point where the service is required, or required to begin, will be used. Now, taking the run from Denison to Dallas, as an example, the crew arriving at Dallas, and the engineer being unable, for some reason, to return to Denison on the return trip, your rule of December 14, 1938, contemplates, does it not, that the senior demoted engineer at Dallas, will be called to fill that vacancy.

A. Except where the—

Q. Answer yes or no, and then give me the exception.

A. It did not, in all cases. It did with exceptions. I cannot answer that yes, or no, because there is an exception to it, in that particular case.

Q. Is it true, generally, however, that the senior available demoted engineer at Dallas will be called to fill that run?

A. Not if it goes back to Denison, if it is a run in and out of here, he would invariably be called for it.

Q. Where is the senior roster working list of engineers kept on that territory?

A. Denison.

Q. At Denison?

A. Yes, sir.

Q. Now, if you call the senior available demoted engineer, as you term him, at Dallas, isn't it quite possible that there may be many men at Dallas with seniority greater than the man at Dallas?

A. There may be men in here, the man on the run here, when a passenger run comes in here, ordinarily there would be an older man in point of seniority as an engineer, than some of the men that might be used in Dallas under that agreement.

Q. In other words, the relative position of the man on the roster at Dallas, is not then determinative of who will be called to fill this run from Dallas to Denison?

A. No. The man to fill the run, that is, go back to Denison, as I tried to explain awhile ago to you, and you interrupted me, is the exception of the rule you laid down. If the demoted engineer that is firing that run that is going back to Denison, was the senior engineer to these men in Dallas, then this man firing the run would be used going back to Denison.

Q. But the man firing the run, and whom you would use, as an engineer may himself be junior to many men at Denison?

A. Oh, yes, sure.

Q. Didn't the application of your seniority require the calling of the oldest available man of the seniority district?

A. It requires calling the senior demoted engineer for assignment to the extra board, or service as engineer.

Q. Ordinarily, under the application of your seniority rules, the oldest man available on the seniority district is entitled to the next opening, isn't he?

A. Yes, sir, we try to do that, with the exceptions you have put in there.

Q. That is all.

The Court:
Have you another witness?

Mr. Madden:
I would like to call Mr. Grace for cross examination.

The Court:
All right.

211 F. W. GRACE, being first duly sworn, examined in chief by Mr. Madden, testified as follows:

Q. What is your name, please?

A. F. W. Grace.

Q. What is your connection with the defendant in this case, are you employed by the Missouri-Kansas-Texas Lines?

A. Yes, sir.

Q. In what capacity?

A. Vice-President and General Manager.

Q. How long have you been Vice-President and general manager, approximately?

A. Eleven years.

Q. Is it a part of your duties to handle all matters that are in controversy here, and that were covered by the mediation agreement?

A. Yes, sir.

Q. Prior to the time that you entered into this mediation agreement, with the Brotherhood of Locomotive Engineers and Firemen, had you had various correspondence

with reference to this matter, between the two organizations?

A. Yes, sir.

Q. Had there been efforts to mediate the matter prior to December 12, 1940?

A. Yes, sir.

Q. By the Firemen's organization and by the carrier also?

A. That is right.

Q. You did make at least two efforts to mediate and you did go before the mediation board twice with the same matters that are involved, and covered by the mediation agreement that was entered into, did you not?

A. The carrier made one effort to invoke the services of mediation in which the Brotherhood of Locomotive Firemen and Brotherhood of Locomotive Engineers, would be brought in as parties.

Q. You say you made one effort, the Firemen's organization made another effort?

A. The firemen endeavored to invoke the services of mediation previous to the time we endeavored to do so.

Q. When did that occur, approximately?

A. I think the firemen's effort was in 1937, ours was in 1938.

Q. Didn't you make an effort also to mediate on or about the 23rd day of June, 1939?

A. Well, that was—I was mistaken, that was in 1939, was the time.

Q. You, as vice president and general manager of the Missouri-Kansas-Texas Lines, took the position during all of that time that the very matters that are covered by the mediation agreement, of which we are complaining, were matters exclusively within the jurisdiction of the locomotive engineers, did you not?

Mr. Wight:
We wish to object, it would be an attempt of a layman to construe the law.

The Court:
Do you stand on your question?

Mr. Madden:
Yes, Your Honor.

The Court:
All right.

A. In handling the matter with the firemen, we did take the position that the matters that were under—matters which they endeavored to make agreements with us, were matters that engineers were also involved in, and that it was a jurisdictional question, and that both organizations should attempt to dispose of it between themselves, rather than to bring the railroad a party to the disagreement, and use the railroad to whip the other organization, use the railroad as the buffer for the proceeding.

Q. Didn't you go further than that, and take the position that it was a matter exclusively within the jurisdiction of the engineers' craft?

A. We stated to the firemen it was a matter on which we had an agreement with the engineers.

Q. I don't think that answers the question. Didn't you take that position, and didn't you so advise the mediation board and the general chairman of the Firemen's Organization?

A. I think so.

Q. You did that? I will hand you a copy of the letter of June 23, 1939, written to the National Mediation Board, purporting to be signed by you, a copy sent to Mr. E. O. Johnson, general Chairman, Brotherhood Locomotive En-

gineers, and to William C. Lash, acting vice president, Mr. Charles McKemy, general chairman, Brotherhood of Locomotive Firemen and Enginemen, and to which there are attached, which are also letters written to you or by you, I will ask you to examine that letter and state whether or not it was written by you with the attachments, and if that is not a copy that was mailed to Mr. Johnson. Those letters are lengthy, and if the Court prefers me, I will let him examine them later.

The Court:
There is an objection filed against you. I don't know what is in them.

A. Yes, sir, I wrote those letters. We sent these letters to the mediation board, those are copies of the letters.

The Court:
All right.

Mr. Madden:
We offer these letters in evidence.

215 (Marked "PLAINTIFF'S EXHIBIT No. 3", as follows:)

Missouri-Kansas-Texas Lines

Operating Department

F. W. Grace,
Vice President & General Manager.

F. D. Winslow,
Ass't Vice President & General Manager.

Dallas, Texas, June 23, 1939.

2539-44-N

National Mediation Board,
Washington, D. C.

Gentlemen:

The carrier seeks the services of the Mediation Board in a controversy initiated by the Brotherhood of Locomotive Firemen and Enginemen consisting of three items shown in letter of Acting Vice President Lash of the Brotherhood of Locomotive Firemen and Enginemen, dated May 25, 1939, a copy of which is attached, marked Attachment No. 1.

Several conferences between the Carrier and representatives of the Brotherhood of Locomotive Firemen and Enginemen failed to bring about a settlement. The questions at issue involve the handling of locomotive engineers; and, at the suggestion of the carrier, there was held a joint conference on June 20, 1939, between Acting Vice President Lash and General Chairman McKemy of the Brotherhood of Locomotive Firemen & Enginemen, General Chairman Johnson of the Brotherhood of Locomotive

Engineers, and railroad representatives, in hope on the part of the Carrier that some agreement between the two organizations involved, to which the carrier could subscribe, could be had; and which would bring about a settlement. A copy of the statement of the carrier handed to the representatives of the two organizations at this joint conference is attached, marked Attachment No. 2.

The joint conference resulted in no agreement; and since the firemen's representatives have stated that they would not seek the services of either the National Railroad Adjustment Board nor of the Mediation Board but that they contemplated convening their General Committee for the purpose of considering a strike vote of their men to enforce their demands, and since the Engineers' Organization representative has stated that his organization would not agree to the handling of engineers as proposed by the firemen's organization, in its letter of May 25, 1939, the carrier now seeks the services of your Honorable Board.

As to Item 1 (Attachment No. 1): The question involved was the subject of a letter of your Board, dated June 23, 1938, file C 17, to this Carrier, asking a statement on a dispute, submitted to the Board by the Brotherhood of Locomotive Firemen & Enginemen, stated as follows:

"Refusal of Carrier to use qualified engineers, who have been demoted to firing service, to fill temporary vacancies as engineers in pool freight service when the engineers' extra board is exhausted at Smithville, Texas, or in the same manner as such demoted engineers are used to fill a vacancy in yard service at Smithville or outlying points when engineers' extra board is exhausted."

The carrier submitted a statement under date of July 6, 1938. The carrier has had no official advice as to the disposition of the case. Item 1, here mentioned, is the same question; and the carrier herewith submits attach-

ment No. 3, copy of its letter of July 6, 1938, to the Secretary of the Board, bearing on this subject.

As to Item No. 2: In June, 1938, the General Chairman of the Brotherhood of Locomotive Engineers complained to the carrier of a lack of uniformity in the use of engineers for "emergency" service, at away from home terminals, and the following instructions were issued December 14, 1938, with the concurrence of the General Chairman of the Engineers' Organization:

"Where engineer cannot be secured from extra board in the usual manner and the use of emergency engineer is necessary the senior demoted engineer (when such is available) the home terminal of whose run or assignment is at the point where the service is required or required to begin will be used."

(Supplemental instructions were issued on May 1, 1939, modifying the foregoing under certain conditions.) This was protested by the General Chairman of the Brotherhood of Locomotive Firemen & Enginemen; and enclosed, attachment No. 4, is a copy of carrier's letter December 14, 1938, to General Chairman McKemy stating the position of the carrier on this question.

Item No. 3—This is referred to as the "Roach case". This reference is to a particular happening, but it really involves, as the last paragraph of the letter of May 25 (Attachment No. 1) shows, the broad question of regulating engineers' working lists generally.

There is enclosed copy of carrier's letter of April 11, 1939, to General Chairman McKemy of Brotherhood of Locomotive Firemen & Enginemen (attachment No. 5) setting forth its position with reference to this item.

In the joint conference held June 20, 1939, the representative of the Engineers Organization declined to agree

to any of the proposals for the handling of engineers as set forth in letter of the firemen's organization dated May 25, 1939, attachment No. 1; and stated that should the carrier accede to the proposals of the firemen that they, the engineers, would protest such action as a violation of their working agreement; and of their right to represent engineers as a class.

It will be obvious from the foregoing—That the class of service involved in the questions at issue is that of locomotive engineer; That the Brotherhood of Locomotive Firemen & Enginemen seeks to have the carrier adopt certain rules representing its views for the handling of locomotive engineers; That the carrier is being asked by the Brotherhood of Locomotive Firemen & Enginemen to treat with the firemen's organization as (at least partially) the representative of the class of service of locomotive engineer, for which class the carrier understands the Brotherhood of Locomotive Engineers is the accredited and the exclusive representative.

The firemen's organization contends that the action of the carrier in the subjects here involved is a violation of that organization's working agreement with the carrier. With this the carrier does not agree. There is quoted from letter of Acting Vice-President Lash of the Firemen's Organization, dated May 31, 1939, the following:

"The application of Rule #44, Engineers' Agreement and Rule #49, Firemen's Agreement were taken from the original Chicago Working Agreement and so written verbatim in the agreements between the Engineers and Firemen with the MK&T in 1918. The language is identifical in both agreements and the application of those rules was directly in accord with the principles and application of the Chicago Working Agreement and the decisions made by the tribunals designated by the joint agreement."

and further from the same letter:

"We have submitted evidence from the best authorities possible to substantiate our position and naturally the best authorities in such cases would be the makers or framers of the Chicago Working Agreement and those in authority to pass upon disputes arising thereunder, namely, The Chief Executives of the BofLE and the BofLF&E. . . ."

It will be seen from this that the Firemen's Organization argues that the question in dispute was the subject of provisions of and interpretations issued under the "Chicago Joint Working Agreement", entered into in 1913 between the two organizations concerned, and that agreements and interpretations of working agreements as applying to the service of locomotive engineers here involved, and entered into between the carrier and Brotherhood of Locomotive Engineers if at variance with the provisions and interpretations under this "Chicago Joint Working Agreement" represent a violation of the firemen's working agreement with the carrier. The carrier, of course, was not a signatory to the so-called Chicago agreement, besides which this agreement between the two organizations was canceled, we understand, at the instigation of the engineers' organization in 1927, and has not since been in effect. The carrier has repeatedly stated to both organizations that if they could arrive at agreement between themselves on the questions at issue, the carrier would respect such an agreement, not detrimental to the interest of the railroad.

In presenting this controversy to the Mediation Board the carrier has outlined in brief its viewpoint. The carrier, of course, reserves the right to present such additional statements as the development of the case may seem to warrant.

This controversy was initiated by the Brotherhood of Locomotive Firemen & Enginemen. It involves questions fundamentally affecting the relations of the carrier with its engineers, represented by the Brotherhood of Locomotive Engineers. The contentions of the Firemen seem to the carrier to question the requirements of the carrier under the Railway Labor Act, as to the recognition of representation for a certain class of service, in view of which the carrier maintains that this controversy may not be considered with reference only to the Brotherhood of Locomotive Firemen and Enginemen, but that the Brotherhood of Locomotive Engineers must be made party thereto; and in view of which the carrier has advised the Brotherhood of Locomotive Engineers representatives, as well as those of the Brotherhood of Locomotive Firemen and Enginemen that it will seek the services of your Honorable Board; and copy of this statement, with attachments, is being forwarded General Chairman Johnson of the Brotherhood of Locomotive Engineers and to Acting Vice President Lash and General Chairman McKemy of the Brotherhood of Locomotive Firemen & Enginemen.

Respectfully submitted,

(Signed) F. W. GRACE.

cc-Mr. E. O. Johnson,
General Chairman,
Brotherhood of Locomotive Engineers,
621 North Bishop Ave.,
Dallas, Texas.

Mr. William C. Lash,
Acting Vice-President,
Brotherhood of Locomotive Firemen & Enginemen,
Jefferson Hotel,
Dallas, Texas.

Mr. Charles McKemy,
General Chairman,
Brotherhood of Locomotive Firemen & Enginemen,
Post Office Box 76,
Denison, Texas.

Dallas, Texas, May 25, 1939.

Mr. F. W. Grace,
Vice-President & General Manager,
Missouri-Kansas-Texas Railway,
Dallas, Texas.

Dear Sir:

We have given serious consideration to what was said by you at our conference yesterday concerning questions in dispute between the Carrier and our Committee, and after having done so, and with the hope of reaching an amicable adjustment of these questions, we submit for your consideration the following, which we believe to be fair and equitable to all concerned:

1. Moving regular assigned pool engineers up to fill vacancies in pool freight service instead of using emergency engineers.

While it is yet our contention that the procedure adopted at Smithville, with respect to this question is improper and unfair, we are willing to withdraw this case with the understanding that you will not extend such practice to other points on the railroad.

2. Use of oldest demoted or furloughed engineer in instances when the engineers' extra list becomes exhausted. Cancel any and all instructions that have been issued with respect to calling other than the oldest demoted or furloughed engineer to perform service as engineer,

when the engineers' extra list is exhausted, it being understood that when the engineers' extra list is exhausted and it is necessary to call an emergency engineer, the senior available furloughed or demoted engineer will be called, regardless of the point at which the vacancy exists, or where such senior furloughed or demoted engineer is located.

3. Regulating engine men's working lists. Roach case. We are agreeable to withdrawing our contentions in this case, provided the following procedure will be adopted in adjusting engine men's working lists.

When conditions arise that make it necessary to regulate enginemen's working lists between established checking periods, in order that those assigned may make reasonable earnings, the Superintendent will immediately call into conference the representatives of the employees to discuss this situation, with the idea of making proper and equitable adjustment. Failing to secure the concurrence of both, he will take such action as seems justified under existing conditions, it being understood that neither of the representatives of the employees will have the right to protest the action taken by the officer of the Company.

Yours very truly,

(Signed) WILLIAM C. LASH,
Acting Vice-President, B. of
L. F. & E.

Sheet 2, Attachment No. 1.

(Carrier's statement handed BofLF&E representatives William C. Lash, Acting Vice-President, and Charles McKemy, General Chairman, and BofLE representative E. O. Johnson, General Chairman, at conference called by Vice President & General Manager F. W. Grace, of the

M-K-T Railroad Company for 10:00 AM June 20, 1939, at Dallas, Texas.)

This joint conference was called at the suggestion of the railroad.

It was called because of failure to settle with the firemen's organization certain complaints and contentions which that organization makes involving the service of men as engineers.

The failure to reach agreement on these subjects resulted in the firemen's organization stating they would consider the taking of a strike vote of their men toward enforceing what they ask.

It is apparent that there is disagreement between the firemen's and the engineers' views with respect to the questions involved. The agreement with one or the other gives rise to disagreement with the other organization. This indicates the jurisdictional nature of the dispute. The position the railroad has taken with respect to the requests of the firemen is, in its sincere opinion, the proper one under its contracts and legal requirements; but such action is not to be construed as any attempt or intention on the railroad's part to favor one class of employee over another. We specifically disclaim any such attempt or intention.

We here repeat our former statements that if some mutually satisfactory agreement covering the matters at issue can be entered into between the two organizations, which is not detrimental to the interests of the railroad, the railroad will handle the men involved in accordance with that agreement.

In order that the engineers' organization may be informed of the specific character of the requests made on the railroad by the firemen's organization, we will, if the firemen's representatives are agreeable, hand to the engineers' representatives copy of letter of Mr. Lash dated May 25, 1939; and ask the firemen's representatives to supplement this with a repetition of the verbal statements made in our conferences on the question of their right to have a voice in the handling of men which involves service as engineers.

Attachment No. 2

Dallas, Texas, July 6, 1938.

-N

Mr. R. F. Cole,
Secretary, National Mediation Board,
Washington, D. C.

Dear Sir:

We have your letter of June 23, file C-17, in connection with application for the Board's services made by Brotherhood of Locomotive Firemen & Enginemen.

This dispute grows out of a complaint made by the *firemen's* organization about a practice followed at Smithville, Texas, for a number of years, whereby men on the *engineers* chain gang or pool freight board, when vacancies occur due to men being off and the assigned extra engineers are not available, the engineers regularly assigned to the pool board are moved up to fill the vacancies, until assigned extra engineers are again available.

In December, 1937, the complaint was made by the General Chairman of the *firemen's* organization; and, not knowing that the subject had had previous handling, we instructed the supervisory forces to discontinue the prac-

tice, and instead of moving men up on the pool board to use demoted (commonly termed "emergency") engineers to fill vacancies where the extra board was exhausted.

A vigorous protest against this action was lodged by the *engineers'* organization and there was produced letters written to engineers' organization by former Manager, Department of Personnel (now deceased), in March, 1929, agreeing to interpretation of the engineer's organization as authorizing the practice set forth in second paragraph of this letter. This is regarded as an interpretation or application of the engineers' working agreement and that organization vigorously contends that in demanding a continuation of the practice at Smithville, they are defending their right to make and interpret contracts, rules, rates and working agreements of the locomotive engineers. The agreement with the engineers organization contains the following:

"We affirm the right to make and interpret contracts, rules rates and working agreements for locomotive engineers shall be vested in the regularly constituted committees of the Brotherhood of Locomotive Engineers."

The following statements seem pertinent to the subject:

The service involved in the dispute is not service of locomotive firemen; it is service of locomotive engineers. It involves individuals who have been promoted to engineers, but who by reason of insufficient train service are normally reduced to firing.

The practice complained of by the firemen's organization was in existence from March, 1929, until December, 1937, before a complaint was made.

While we have not denied and have no intention of denying the firemen's organization's right to represent such individual engineers as may elect to have such representation, we think we are bound to recognize the right

of the engineers' organization to represent locomotive engineers, as a class.

Replying to the specific questions you ask:

Question: Whether the dispute involves a request of the organization for a change in rules of existing agreement.

Answer: The firemen's organization is seeking to apply the interpretation of the organization to the situation in question, whereas the *engineers'* organization, which is the accredited representative of the locomotive engineers as a class, denies the right of the firemen's organization to interfere with the interpretation, application, etc., of the *engineers'* agreement.

Question: Whether the organization has served thirty days notice of change in rules.

Answer: No. The agreement involved is that with the locomotive *engineers*, whereas the complainant is the locomotive firemen.

Question: Whether the dispute involves the application or interpretation of existing rules.

Answer: Yes. But not of existing rules negotiated by the complainant organization.

Question: Whether the case has been discussed in conference with the highest operating officer designated to handle such disputes.

Answer: Yes.

Yours very truly,
(Sgd.) F. W. GRACE.

Attachment No. 3.

Dallas, Texas, December 14, 1938.

2539-44-N

Mr. Charles McKemy,
General Chairman,
Brotherhood of Locomotive Firemen & Enginemen,
Post Office Box 76,
Denison, Texas.

Dear Sir:

Referring to your letter of December 2, file M-2057 concerning the use of emergency engineers at away from district home terminals.

We have considered what you say in this letter as well as in previous communications and conferences. What we consider our obligation is simply stated. That is, that we are obligated to recognize the Brotherhod of Locomotive Engineers as the accredited and exclusive representative of locomotive engineers as a class.

We do not question in any manner such representation rights as to individuals as preserved to you under the Railway Labor Act; and we certainly have no intention or desire to violate the provisions of that Act. We deplore the lack of agreement between the two organizations concerned, but we feel that our obligation under the Railway Labor Act is as outlined in the foregoing.

Instructions have been issued accordingly.

Yours very truly,
(Sgd.) F. W. GRACE.

Attachment No. 4.

Dallas, Texas, April 11, 1939.

2539-44-N

Mr. Charles McKemy,
General Chairman,
Brotherhood of Locomotive Firemen & Enginemen,
Post Office Box 76,
Denison, Texas.

Dear Sir:

Referring to your letter of March 18, file M-2104, and to the conference at Dallas, April 6, 1939, at which was also present Messrs. Kirrane, Griffey and Penn, concerning engineers' extra boards.

As stated to you at the conference, no agreement was entered into between the Brotherhood of Locomotive Firemen & Enginemen and the railroad covering the handling of engineers in the letters to which you refer, written by Mr. Williams, April 17, 1929, and subsequently. These letters and the conferences which were held represented an earnest attempt on his part to compose the differences between the engineers and firemen on the subject involved in your letter of March 18, 1939. That attempt was not successful because the arrangement was not acceptable to the engineers' organization; and, further, as pointed out to you in the conference, former General Chairman Laisure of your organization stated he was willing to go along with it only provided General Chairman Johnson of the Engineers' organization was willing to do so. Mr. Johnson was unwilling.

You agreed in the conference April 6 that the schedule provisions here involved have for their primary and sole purpose the regulation of mileage earnings as nearly as

practicable within the limits specified. Your contentions appear to be about the method of accomplishing this regulation of mileage.

Numerous complaints have been made by the engineers' organization that the handling of boards was not accomplishing the purpose of mileage regulation. Specific complaint was made by them about the Franklin board.

We do not think a hard and fast, inflexible plan of using the mileage check of the previous period, and the adjustment of boards only upon the issuance of the mileage check; or any other invariable method which does not take all the factors into consideration, can accomplish the real purpose in view; i. e., the regulation of the mileage as nearly as practicable within the limits specified.

In any case, however, we consider it our obligation, imposed upon us by statute, to treat with the engineers' organization as the accredited representative for the services of men used as engineers, the same as we consider the firemen's organization in connection with the services of men used as firemen; and we have not and do not now consider it lawful or proper for us to enter into an understanding or agreement with an organization representing one class to cover the handling of men used in another service, for which there is an accredited representative for that class.

This is not to say that we shall not use our efforts toward orderly handling. You presented at the conference on April 6, some figures involved in the case of Engineer Roach which it appears were developed upon the issuance of the mileage check March 20, and after your letter of March 18, was written. Where individual situations such as this are complained of we shall, of course, investigate them. In handling complaints, however, involving service as engineer, we shall recognize the right of your organization to represent any individual who may elect to have such representation, but we shall also recognize

what we consider the exclusive right of the engineers' organization to legislate for locomotive engineers as a class; and that no agreement has been made with your or any other organization, or in our opinion could lawfully be made, which abridges such right.

The issues here involved are not of primary concern to the carrier. They involve simply the use of one or another individual; and are raised wholly because of the failure of the two organizations to arrive at a mutually satisfactory understanding. As stated to you in the conference, the railroad is agreeable to handling this situation under any arrangement that may be agreed to by the organizations, not detrimental to the interests of the railroad.

Yours very truly,
(Sgd.) F. W. GRACE.

Attachment No. 5.

Mr. Gresham:

May the third party defendant, be a party to the objection made by Mr. Wight?

The Court:

Certainly, there being no jury here, we put the evidence in the record. Both parties have the benefit of it, if they wish to make use of them on appeal, if an appeal is had. I do not require a man to state his reasons, he has a right to put in his reasons that he thinks are appropriate, when I do not require him to state them, but if I ask for the reason, then he is bound by the reason that he gives. That is fair to everybody. We will now take a recess until 2:30.

Afternoon Session.

Mr. Wight:

If the Court please, we intended before the recess, that we would perhaps not cross examine Mr. Grace at this time, but it appears to us our examination will be so short it might facilitate the case if we finish.

The Court:

All right.

Direct Examination.

By Mr. Wight:

Q. Mr. Grace, you were asked about a letter of June 23, 1939; at that time I believe you did have a contract with the engineers, the plaintiffs in the case, relative to the matters discussed in that letter?

A. We had a letter agreement, covering the item.

Q. Subsequently you made the contract involved in this case, with the locomotive firemen?

A. The mediation agreement, yes.

Q. That was after it had been taken up before the mediation board?

A. Yes.

Q. Will you kindly explain to the Court the circumstances leading up to the making of the agreement with the firemen?

A. Well, the railroad, of course, has contracts with both organizations. In 1937, I believe in December, the general chairman of the firemen was in my office, and called my attention to a practice at Smithville, Texas, with reference to moving engineers up on the pool board to fill vacancies of men laying off, when the extra board was exhausted, and not using the senior demoted engineer who was back firing to fill such vacancy. That practice, of course, to me, was new, and it had never been in effect

in any of the districts in which I had worked as superintendent or train master. I told the general chairman that he must be mistaken about it. He insisted that it was going on, and I called the office at Smithville, and talked to the chief dispatcher, and asked if he was doing that. He said that he was. I instructed him to discontinue it. He didn't tell me at the time that there had been an agreement or an exchange of letters between the representatives of the engineers organization and the former manager of personnel covering that particular situation. But they went ahead and discontinued the practice, that, of course, immediately provoked a dispute with the engineers organization and the general chairman of the engineers protested and called attention to the fact that such practice had been in effect eight or nine years. We then investigated and we could find nothing in our files in connection with it, so we had the files looked into in St. Louis, where the manager of personnel had his headquarters, and found that there was an understanding to that effect. Then, of course, in view of the understanding, we immediately canceled the arrangement that I had made, and restored the original practice.

Q. May I interrupt? That was done by promulgation of the rule in the form of a bulletin or notice to the local brotherhood?

A. No, sir, we gave the notice to the superintendent. Then, of course, that brought the subject back to the firemen, and they protested and had one of their vice presidents handle the matter in connection with their general committee and general chairman, with me. I took the position we were sustaining the agreement that we had with the engineers, which had been in effect for a number of years, and we declined to make any change in the matter, notwithstanding the fact that the practice was not in effect on any other part of the railroad.

The next handling, I believe, was in 1939, at which time the firemen again protested this particular handling, and they added to that that protest and handling of the—calling of the senior demoted available men for service when no regular extra man was available, and some other matters with reference to the regulation of the working list. We again took the position that the matter was one in which the engineers had agreements with the railroad, that it was a jurisdictional dispute, and we endeavored in every way possible to get the two organizations together to decide on what they wanted to do, that the railroad was willing to handle the matter in any way that would be satisfactory to them, that would not penalize the railroad. We failed to come to any agreement with the firemen. We did call in the general chairmen of the engineers at that time, and he was not willing to make any concession or change in the manner in which the men were being handled. And after that conference we endeavored to invoke the services of the mediation board. We wanted to get the matter settled. The mediation board would not take jurisdiction, because they said it was a matter of interpretation of the agreements and relief should be sought with the railway adjustment board. We had asked the representatives of both organizations to handle the matter with the railway adjustment board, and neither of the organizations would avail themselves of that course. The matter then rocked along for a period of about a year, and the firemen then asked for two new rules in their agreement, two or three, I think it is two, which added penalties for the handling of the demoted engineer that was mentioned here this morning. We declined to go along with the new rules, and we again told them we felt that it was a matter that the firemen, representative of the firemen and engineers, should get together on, and decide, and the railroad would put into effect any arrangement that did not penalize the railroad, or add additional employees to the railroad. We failed in coming

to an agreement with the firemen, and they then asked for mediation. The mediators were sent out and we handled the matter, and we still continued to take the same stand. Then the National Mediation Board at Washington wired our president, and I think the president of the firemen's organization, and asked that they both come to Washington to see if some settlement could not be made. Our president, of course, was at that time not in position to go, and I went to Washington. Our executive vice president and Mr. Campbell met with the assistant vice-president and executive chairman of the firemen and mediation board. We, of course, had wanted the matter settled. We felt that if the matter had been left to an emergency board, that the engineers' organization could intervene. We found out that they could not, and we were also notified that in the event of an arbitration, where the railroad would appoint a representative, and the firemen's organization a representative, and the extra man would be appointed if the engineers attempted to intervene or come in, and the two members, that is the railroad, and the neutral member, would vote to let them come in, then the firemen would withdraw. We were up against the situation, we wanted to settle it, it was a jurisdictional dispute. One of the situations on which we had an agreement, the interpretation of the engineers agreement with reference to the use of men at Smithville, it was one that was not in effect on our railroad at any other point, and one, so far as we knew, that was not in effect on any railroad in the west. The manner of calling the senior available man for service, on our railroad, and the agreement we had with the engineers, was, of course, applicable to all points on our railroad, and was different from practically all other railroads in the west and southwest.

At that time, we agreed, with the mediation board, to cancel the agreement we had with the firemen, and attempt to work the matter out with the engineers.

Q. You say your practice was different from other roads in the southwest, do you have reference to the party with whom you negotiated in connection with these matters, the brotherhood with whom you negotiated?

Mr. Madden:

May I interrupt, the witness was a little confused.

The Court:

You use the wrong phrase.

Q. You mean, cancel the agreement you had with the engineers and not the firemen?

A. I should have said that.

Mr. Madden:

I am sure you intended that.

Mr. Wight:

What is the practice on the other railroads in the southwest, relative to the organizations with which they negotiate as to the service of these—

Mr. Madden:

I object to that, that is wholly immaterial, the custom and practice on other railroads. It cannot effect or change these existing agreements, and that is opening up a field for a great deal of evidence, as to what might be the practice on other railroads. I don't think that is in issue here, and is immaterial here, because we have existing agreements that are admitted to be in effect up to the time the mediation agreement was entered into.

Mr. Wight:

I agree with counsel, except all we are offering is in explanation of the change in the position of the railroad

on the matter, since we had the agreement with the engineers.

The Court:
Do you stand on your objection, Mr. Madden?

Mr. Madden:
Yes.

The Court:
I think it is a good objection, gentlemen.

(By Mr. Wight):

Q. Have you completed your recital of facts, what was the last statement of facts?

A. We canceled the agreement with the engineers, and attempted to work the matter out with them.

Q. All right.

A. And this, of course, brought protests from the engineers. We served the notices, as we are required to do under the Railway Labor Act, and we had conferences with the Vice President of the engineers organization, their general chairman, also the mediator, in which we attempted to have the engineers go along with the mediation agreement that we had made with the firemen. They declined to do this, and as long as the matter was in mediation, although the time had expired, which put the arrangement into effect with the firemen, that is, we had gone beyond the date, as long as it was in mediation there was no protest from the firemen concerning it. When we had been notified that the mediator, that is, the board, mediation efforts had failed, then the mediator offered arbitration. The railroad said they would be willing to arbitrate the matter, and the engineers, or their representatives, declined arbitration. We then served notice on the engineers to put the mediation agreement into effect. I will say that the manner in which the men are now

being handled, at Smithville, is the same as it is and has been at other points on our line, and the manner in which we are now calling senior available demoted engineers, who is back firing, for emergency service, is the same as on other railroads in the southwest and west.

Mr. Madde:

I don't think that the last statement is really responsive, I think it goes to the same objection that was made and sustained, I move to strike that part of his answer from the record on the ground that it is not material, and not responsive.

The Court:

Overrule that motion.

Q. The requirements of thirty days notice, contains the cancellation provision—all these agreements contained, was that in your contract with the engineers, and the firemen, as well as the statute, is it not?

A. Yes, sir.

Q. And that was duly complied with?

A. Yes, sir.

Q. You are still ready to negotiate with either or both of the organizations in question about such matters?

A. Yes, sir.

Q. And if the Court should hold that you are free, that there is no valid contract between either of you in regard to it, would you attempt to continue the services by making such arrangement for the securing of engineering services as might satisfy the railroad requirements?

A. Yes, sir.

Q. And hope that it would be satisfactory or not cause too much trouble with the two brotherhoods?

A. Yes, sir.

Q. That is all.

Mr. Madden:
Shall I cross examine, the third party defendant?

The Court:
Just suit yourself. You may cross examine if you wish, he was put on as your witness, but he was adverse, if you wish to question him, all right. Do you wish to question him, Mr. Gresham?

Mr. Gresham:
No, sir.

The Court:
All right.

Cross Examination.

By Mr. Madden:
Q. Now, Mr. Grace, as a matter of fact, prior to the time you entered into this mediation agreement, there had been a strike vote taken by the firemen?
A. We were informed they had taken a strike vote.
Q. They were threatening the railroad with a strike, unless this agreement was entered into?
A. Well, they were threatening the railroad with a strike unless we agreed to accept the rule that they had asked to be inserted in their agreement.
Q. Now, prior to that time, I believe you testified that you had taken the position that you were obligated under the statute to treat only with the engineer's organization as the accredited representative of the engineers, on these various matters?
A. As a class, yes, sir.
Q. You so advised Mr. McKemy, general chairman of the Brotherhood of Locomotive Engineers—I mean Locomotive Firemen—on or about April 1, 1938, did you not?

A. I would say you have the record there, it speaks for itself.

Q. When did you change your position with reference to that matter?

A. We endeavored to sustain the agreement that we had, the interpretation of the agreement that we had, with reference to these matters, with the engineers. When the National Mediation Board called us to Washington, we, of course, wanted the matter settled. We thought that under the act, that the mediation board, that the engineers should intervene in any emergency board that might be appointed to become a party, and if they could, we felt then that the matter which we have always held was a jurisdictional dispute, could be settled. When we found out that it could not, then we were without any help at all in connection with sustaining the rules, or agreement, that had been made, and we felt that before the emergency board that we would lose one of the questions—

Q. I don't think that is responsive, I will make it a little clearer.

A. Well, it is a fact.

Q. I refer here to your letter of April 11, addressed to Charles McKemy, in which you made this statement, "In case, however,—" you are referring to the same matters covered by the mediation agreement in this case—"in any case, however we consider our obligation imposed upon us by statute to treat with the Engineers' organization as the accredited representative for the services of men used as engineers, the same as we considered the firemen's organization in connection with services of men used as firemen, and we have not, and do not now consider it lawful or proper for us to enter into an understanding or agreement with an organization representing any class to cover the handling of men used in another service for which there is an accredited representative for that class."

And you were speaking about the same matters that are involved in the mediation agreement. Now, when did

you change your attitude about that matter, or have you changed your position about it?

A. This letter that you speak of was written in 1939, wasn't it?

Q. That is correct.

A. At that time we endeavored to invoke the services of the mediation board, we were unable to do so.

Q. What I want to know is, when, at what time, did you change your attitude or have you changed that attitude about the matters that are involved in this controversy here, and that were covered with the mediation agreement?

A. The matters that are involved in the controversy brought about through mediation agreement, were discussed in Washington before the National Mediation Board. The firemen were not asking for the particular things that have been testified to here this morning, but they were asking for two new rules, which covered exactly the things that have been discussed this morning. And if those rules, had they been granted by the railroad, or a fact finding committee, or emergency board, then the railroad would have been penalized to a considerable extent by the operation of those rules. We felt that in entering into this agreement, that had the matter gone to an emergency board, that one of the positions we had sustained, or attempted to sustain, would probably be won by the firemen, which would penalize the railroad. In which event, the firemen, of course, had they won that, they would have been happy in connection with it, and the engineers, it would not have made any difference to them, except they might have asked for the same thing.

Q. I still don't think that answers my question, as to the time you changed your position you had taken?

A. December 12, 1940.

Q. On that date?

A. Yes.

Q. You came to a different conclusion about the matter?

A. Yes, sir.

Q. Did the fact that you were threatened with a strike, have anything to do with the change in your position with reference to the matter?

A. The railroad was not anxious for a strike and the advertising that goes in connection with it, but the fact that we felt that we possibly could not win one of the situations before the board, and the further fact that the engineers could not intervene in the emergency board hearing.

Q. But you had never before taken such a position, that you could not sustain one of these rules, and do you say that the strike, the threat of a strike, influenced you in any way in changing your view of the matter—as a matter of fact, it did, didn't it?

A. I said we were not anxious to have a strike or emergency board appointed.

Q. In other words, your answer to that question is yes, it did influence you?

A. Yes, it might have influenced me a little.

Q. The practice that you had in effect by virtue of this agreement which was entered into in 1939, with reference to Smithville is the practice that is also in effect, and has been in effect at Bellmede for a number of years, has it not?

A. Not by agreement.

Q. I mean as a matter of actual practice on the railroad?

A. Mr. Johnson, the general chairman of the engineers, has told me that it was handled in that manner, but so far as I know, I couldn't say that it was.

Q. You don't know whether it was or was not?

A. No, sir.

Q. You would not want to say that it was not, in fact, handled that way?

A. No, sir.

Q. You don't know whether or not, if it is handled, it is handled at the instance of the carrier, and not the instance of the bortherhood; you are unable to testify about the facts with reference to Bellmede?

A. I don't know that it is in effect there, I will say that no letter, or agreement, or any agreement of handling with me, has caused it to be in effect, if it is.

Q. From 1929, the date on which this agreement went into effect in Smithville, until 1937, there was never any protest made to the railroad by the firemen's organization, with reference to the operation of that agreement of 1929 at Smithville, was there?

A. Well, there was never any protest made, so far as I know. There might have been a protest made to the railroad. In fact, the matters at that time were being handled by a manager of personnel, located in St. Louis, and were not turned over to me, for us until 1933.

Q. From 1933 to 1937, to your knowledge, there was never any complaint made?

A. No, sir.

Q. You would be the man to whom the complaint would normally be made?

A. I would be the man that it would finally come to, if it was not settled before.

Q. Prior to 1933, Mr. Williams was the man that handled the matters that are now in controversy here, is that correct?

A. Yes, sir. There might have been a protest to the superintendent, but so far as I know, it never reached our office.

Q. Now, with reference to the other rule to call the emergency engineers, when there is no engineer available on an extra board, so long as he is out, is away from the home terminal, how long would you say that rule was in effect, prior to the 13th day of April, 1941, to your knowledge?

A. You mean the rule we put in in connection with the mediation agreement?

Q. I mean the rule as it existed prior to the time you entered into that mediation agreement.

A. Well, I believe the original rule was probably—the original agreement was probably made in December, 1938, or 1939, I am not sure.

Q. There is a formal agreement here, but as a matter of fact, as early as 1932, was not there a similar agreement with reference to that matter? I hand you here a part of Exhibit 2, a letter of instruction dated July 11, from W. E. Williams, to T. F. Bardner and others, I wish you would examine that?

A. That is not exactly the same.

Q. It is substantially the same?

A. It is substantially the same, it is somewhat similar.

Q. In what respect does it differ from the rule that you entered into in 1938?

A. Well, this was an engineer, refers to the employment or calling of the demoted engineer, whose home terminal was at a point and was laying off at the time.

Q. Isn't that the same situation?

A. No, sir.

Q. Unless the engineer lays off, or is away from the home terminal, there never would be any occasion to call an emergency engineer?

A. It speaks of the man who was called, who was laying off.

Q. I will ask you to examine the additional exhibit here, I will ask you to read this letter of June 8, 1932, from Mr. Johnson and Mr. Williams, and the reply of June 15, or possibly you can get it all out of the reply of June 15. I will ask you whether or not that is not a similar matter, or practically the same rule?

A. The letter of June 8, 1932, it is not signed, it is a letter to Mr. Williams.

Q. It is a copy?

A. The manager of personnel at St. Louis, Missouri.

Q. You might just read it to yourself, and tell the Court.

A. It says: "My opinion has been requested on the following case:

"A demoted engineer, assigned as fireman on regular passenger run, operating between San Antonio and Waco, with San Antonio the home terminal. The firemen on these runs have lay overs at certain intervals during each month, when a swing man makes a trip on their run, allowing the regular assigned firemen to be off at these times for approximately three days. If, for any reason, this regular assigned fireman would happen to be at Waco, the away from home terminal of his run, during the time he is taking his lay over, would he be subject to call for an emergency trip as engineer, for service originating at Waco when there were other emergency engineers located at Waco and available?

It is my opinion that a demoted engineer in this case would not be subject to call in emergency for service originating at Waco on his lay over trip any more than he would on the days on which his run was in Waco. It has never been the practice to hold a demoted engineer off of his run at the away from home terminal for the purpose of exercising his seniority as an emergency engineer.

Will you kindly give me your opinion on proper method of handling a case such as above cited? This in order that I may give reliable information or interpretation of the case referred to me.

Yours truly,

(Signed) E. O. JOHNSON,

General Chairman, BofLE,

MKT.

Q. That is a letter from Johnson to Williams, now, the reply, that is the next letter there, I believe this is the reply.

A. June 25, to Mr. Johnson, "Replying to yours of June 8, the demoted engineer should not be used under conditions recited by you, except in case of strict emergency, where no engineer is available or can be made available."

Q. You say that is not substantially the application of this same rule, that was agreed to between you and the brotherhood in 1938?

A. I say that it is not.

Q. That it is not?

A. Yes, sir.

Q. Will you tell the Court in what respect it differs?

A. This refers to the use of an engineer who is laying off, and away from his home terminal, he could not be used for any service except in absolute strict emergency, such as has been recited in the letter.

Q. Isn't that exactly the situation under the agreement of 1938, that a man that is away from the home terminal could not be called then, however, he might be a senior man and filling a vacancy created by a man laying off?

A. No, sir, I would say it is not a similar case at all.

Q. Do you tell the Court that the practice set forth in your agreement, I believe of December 14, 1938, with reference to that matter, was not in effect for a long period of time prior to that date?

A. Well, I would not say that it was in effect, it was not uniform at all points on the railroad. We made a canvass of the railroad, how the matter was being handled at the various points on the railroad. On certain districts it was handled in line with the agreement made in December, 1938, in fact, and possibly in the preponderance of the cases, it was handled that way. But at other points, the senior available man was called in when no extra man could be used.

Q. Even though it was not his home terminal?

A. That is it.

Q. You just called him off of another run?

A. Yes, sir.

Q. Now, one other matter. Did I understand you to say a few minutes ago that the matters that were submitted with the mediation board by your letter of June 23, 1929,—

A. 1939.

Q. —did not include the identical question that was covered by the mediation agreement, in principle?

Mr. Wight:

If the Court please, we want both parties, really all parties litigant, to have the benefit of all information, but it seems that we are going pretty far afield, with the question of whether or not the statute forbade the railroad to deal with a fireman in connection with this matter. I object to the testimony as immaterial.

The Court:

Yes, really, he is arguing with his witness. He is his witness, and he is trying to get the witness to say something that he did not say.

Mr. Madden:

He is an official of the defendant.

The Court:

You put him on.

Mr. Madden:

I only called him for cross examination.

The Court:

Even that situation would not justify an argument with the witness. He answers, and then you argue about it.

he has exposed his theory, and you have your theory, and that is all there is to it.

Q. In connection with the letter that was introduced in evidence, written by you to the mediation board on June 23, 1939, you had various other letters attached, as attachments. And the attachment is a statement, is it not, of the position that the railroad took with reference to the matter?

A. Yes, sir.

Q. That was your statement, acting on behalf of the railroad?

A. Yes, sir.

Q. And in this first letter, you set out, the statement of the position that you took on page 3, did you not?

A. To the mediation board?

Q. Yes.

A. Yes.

Q. That is all.

Mr. Heiss:

Are we permitted at this time to ask a few questions?

The Court:

Sure, if you wish.

Mr. Heiss:

I am offering in evidence on behalf of the third party defendant what may be marked for identification, a letter dated August 3, 1940, as "THIRD PARTY DEFENDANT'S EXHIBIT No. 1", as follows:

Dallas, Texas, August 3, 1940.

Mr. F. W. Grace,
Vice President & General Manager,
Missouri-Kansas-Texas Lines,
Dallas, Texas.

Dear Sir:

In view of your continued position to the effect that the Brotherhood of Locomotive Firemen and Enginemen, which organization, through its legally accredited representatives, is contending that the Missouri-Kansas-Texas Railroad management is not applying provisions of the existing agreement, effective October 1, 1918, in accordance with the proper and accepted interpretations and application of such schedule provisions, is wrong in their contentions, a position with which we do not agree, we are now and herewith serving appropriate notice in accordance with Section 6 of the Railway Labor Act, as amended, of our desire to negotiate the following agreements:

1. A fireman, hostler or hostler helper, taken off of his regular assignment to perform service as engineer, will be paid not less than he would have earned had he remained on his regular assignment, except where he is placed on the engineers' extra list or assigned to a regular run or job as engineer in accordance with his seniority.

2. When necessary to call a demoted engineer who is back firing to perform service as engineer, the oldest available demoted engineer will be called.

3. When demoted engineers, who are back firing, are placed on the engineers' extra list, or are assigned to a regular run or job as engineer, they will be paid not less than what they would have earned as firemen during the period they are assigned as engineer, if they are reduced to firing service in less than ten (10) days after they have been placed on the engineers' extra list or assigned to a regular run or job as engineer.

The foregoing requests are presented without prejudice to all existing agreements now in effect between the Missouri-Kansas-Texas Railroad and the Brotherhood of Locomotive Firemen and Enginemen.

Request is made for conference for the discussion of the foregoing at your earliest convenience. You can reach us at the Scott Hotel, Dallas, Texas.

Yours very truly,

(Signed) H. M. VAN SANT,
Vice President, BofLF&E.

(Signed) CHAS. McKEMY,
General Chairman, BofLF&E.

Mr. Heiss:

Also letter dated December, 1940, as "THIRD PARTY DEFENDANT'S EXHIBIT No. 2", as follows:

Missouri-Kansas-Texas Lines

Operating Department

Dallas, Texas, December 19, 1940.

2539-44-N

Mr. E. O. Johnson,
General Chairman,
Brotherhood of Locomotive Engineers,
621 North Bishop Ave.,
Dallas, Texas.

Mr. Charles McKemy,
General Chairman,
Brotherhood of Locomotive Firemen & Enginemen,
Post Office Box 76,
Denison, Texas.

Gentlemen:

In connection with the assignment of men to engineers' extra boards, and in the interest of and effort toward reaching a mutually satisfactory plan of handling this, and avoid the difficulties and controversies which have arisen from time to time over this situation, we ask that you gentlemen participate in a conference with the undersigned, on a date to be mutually agreed upon, with the intent of finding some mutually agreeable plan which shall be followed in the adjustment of these boards.

Will you please advise if you are agreeable to such a conference, and if December 23, 1940, is an agreeable date for such conference.

Yours very truly,
(Signed) F. W. GRACE.

(By Mr. Heiss):

Q. I will ask you, Mr. Grace, if you received Third Party Defendant's Exhibit 1, from the signatures thereto, and also Exhibit 2, and whether Exhibit 2 is a copy of his letter?

A. We received this Exhibit 1, and I signed Exhibit 2.

Mr. Heiss:

These are offered in evidence.

(Whereupon Third Party Defendant's Exhibits 1 and 2, were offered in evidence, as heretofore copied in the record.)

Q. Are items 1, 2, and 3, in Exhibit 1, the rules which were asked of you by the Brotherhood of Locomotive Firemen and Enginemen?

A. Yes, sir.

Q. And was the last mediation over the request for these rules?

A. Yes, sir.

Q. And was it in connection with a discussion of the request for these rules, that you went to Washington before the National Mediation Board?

A. It was.

Mr. Madden:

If Your Honor please, we would like to introduce in the record, by agreement, the constitution and by-laws of the Grand International Brotherhood of Locomotive Engineers.

I don't know that they serve any purpose in this hearing, but they might be some benefit in the event of an appeal.

Mr. Gresham:
Do you offer that entire booklet?

Mr. Madden:
We will stipulate, in the event there may be a record prepared on appeal.

Mr. Gresham:
We object, on the ground that it is immaterial.

Mr. Madden:
I realize some of it is.

Mr. Gresham:
We haven't seen it.

The Court:
Well, articles 43, 44, and 45, have been referred to, and any other article you wish to be put in by any side can be taken out of that.

Mr. Madden:
That is the schedule. This is the constitution and by-laws, which is offered for the purpose of showing, in more detail, the set-up with reference to the organization of the engineers. I assume they would want to put theirs in. Do you have any objection?

Mr. Gresham:
We think it is irrelevant and immaterial.

Mr. Madden:
We offer it in evidence.

The Court:

There is no attack on it, is there? I would like to see the pleading.

Mr. Madden:

I understood that there was no objection to it, I will just withdraw it.

The Court:

If there is anything in it that either side wishes to take out and put in, I think you might do that.

Mr. Gresham:

That is all right.

The Court:

It may go in with that understanding.

Mr. Madden:

I want to read into the record, a stipulation, with reference to a matter from the annual report of the National Mediation Board, the first portion of these figures, with which you are familiar; any objection to that?

Mr. Heiss:

None whatever.

Mr. Wight:

No.

Mr. Madden:

This merely shows that the principal carriers in the United States, are 142. That the Brotherhood of Locomotive Engineers represent out of that 142, locomotive engineers on 130 roads; locomotive firemen, hostlers, and hostler helpers on 3. That the Brotherhood of Locomotive Firemen and Engineers represent locomotive firemen,

hostlers and hostlers helpers on 131. Hostlers on one. and locomotive engineers on 7. With that the plaintiff rests.

Plaintiff rests.

Mr. Wight:

The only thing I wish to put in evidence, if it has not been already put in, is the firemen's agreement. I take it it may be considered in evidence, if it has not been offered in evidence.

262 (Marked "DEFENDANT'S EXHIBIT 1".)

United States Railroad Administration

Director General of Railroads

Missouri, Kansas & Texas Railroad

Missouri, Kansas & Texas Railroad of Texas

Wichita Falls & Northwestern Railroad

Agreement
Between the

Missouri, Kansas & Texas Railroad

Missouri, Kansas & Texas Railroad of Texas
and
Wichita Falls & Northwestern Railroad
and

The Brotherhood of Locomotive Firemen and Enginemen, Governing Wages and Working Conditions of all Firemen employed by said Railroad Companies.

Effective October 1st, 1918.

Articles 10, 30, 39, 40, 41(a), 44, 49, 58, 86, as follows:

Article 10: Firemen in through freight service will be run first in, first out and if run around at terminals

through no fault of their own they will receive one day's pay, and will be placed behind other firemen in their assigned service. This not to apply to firemen held in compliance with the hours of Service Law.

If a fireman is run around at terminal after being called, he will be paid 100 miles and be permitted to continue trip.

If a regularly assigned firemen is not called for his turn and loses the trip, he will be paid for all time or mileage made by his turn.

The railroads will not assign through freight firemen to regular runs unless satisfactory to the majority of the firemen on the district affected.

Article 30: Deadhead Service. (a) Firemen will be paid $5.19 per day for deadheading on Railroad business for every 24 hours or less when under orders; except where the distance is 50 miles or less, they will be paid one-half the above amount. Firemen will not be paid for deadheading when sent to relieve Firemen who lay off on their own account. In case of sickness or disability to themselves, they shall not be considered laying off on their own account.

(b) Firemen sent to take the place of wayfreight firemen who decline to work on Sunday will be paid for deadheading. Overtime will not be allowed in deadhead service.

(c) Firemen sent out to intermediate point to bring in a train tied up under the Hours of Service Law will not be considered in deadhead service, but as continuous service from time called to report for duty, and paid according to the class of train or engine they run.

(d) When service intervenes, or a fireman is relieved between two deadhead trips, or there is any change in the destination to where he was originally ordered to deadhead, each deadhead trip will be computed and paid for separately regardless of the twenty-four hour period.

(e) Firemen deadheading to Terminal after being tied up under the Hours of Service Law, will not be considered in deadhead service, but will be paid in accordance with Article 70.

(f) Firemen will not be considered in deadhead service when going to or returning from Court or Coroner's Inquest.

Article 39: Seniority Rights. (a) Seniority of firemen to all classes of service will be based from the date they last entered the service of the Railroads on their respective Districts as firemen. This not to be retroactive.

(b) Switch firemen now in the service who have not yet acquired a road seniority date on October 15, 1912, will be given a road seniority date as from October 15, 1912; and the oldest of such Switch firemen will be considered the senior of such men as road firemen, provided such switch firemen accepted road service subsequent to October 15, 1912. If switch firemen who were in service prior to October 15, 1912, failed or refused to accept regular road service subsequent to October 15, 1912, they will be given no seniority date as Road firemen and will be listed as "Fixtures" in yard service.

(c) Switch firemen who entered the service prior to October 15, 1912, will not be required to take road service unless they so desire. It is understood that all firemen who entered the service of the Railroads since October

15, 1912, must be classed as Road firemen and cannot be classed as "Fixtures" in yard service.

(c) The right to regular engines, and to positions of Hostler, also the right and preference to regular runs will be governed by seniority in road service on the respective Districts to which Firemen may be assigned. In case of a temporary vacancy in hostling service, the senior available firemen will be selected.

Article 40: (a) When any run is created or vacant on a district, the senior fireman on such District will have the right to such run. Should he fail to make application, or bid for such run within ten days after such vacancy is posted, except in the case of sickness or absence, he will forfeit his right to such run until it again becomes vacant, and it will be opened to each firemen who is younger in service in accordance with the above provisions, provided, that when a fireman exercises the privilege of taking a run created or made vacant during his sickness or absence, the run will not otherwise be re-opened.

(b) A run will be considered vacant when terminal is changed to the extent of two or more miles, or when vacated by the firemen holding it, or when the time or mileage is changed to the extent of 10 per cent, or when the lay over is changed as much as four hours. This last provision not to apply to yard engines.

Article 41: (a) Should service be reduced, preference of runs will be governed by seniority on respective districts. Firemen set back from regular road service may take a position on the extra list, or any switch engine to which their seniority may entitle them. Provided they do not displace a "Fixture" in the yard service, except that road firemen who are cut entirely off the road extra

list may displace any yard fireman their junior as a fireman in the service of the Company.

Article 44: We affirm the right to make and interpret contracts, rules and rates; and working agreements for Locomotive Firemen and Hostlers shall be vested in the regularly constituted Committee of the Brotherhood of the Locomotive Firemen and Enginemen.

Article 49: No more firemen will be assigned in pool or chain gang freight service than can make at least a minimum of 3,200 miles per month or in extra service than can make at least a minimum of 2,600 miles per month, or in switching service than can make at least 26 days per month.

(a) When, from any cause, it becomes necessary to reduce the number of engineers on the engineers' working list on any seniority District, those taken off may, if they so elect, displace any fireman their junior on that seniority District under the following conditions.

First: That no reduction will be made so long as those in assigned or extra passenger service are earning the equivalent of 4,000 miles per month; in assigned, pooled or chain-gang freight, or other services paying freight rates are averaging the equivalent of 3,200 miles per month; on the road extra list are averaging the equivalent of 2,600 miles per month or those on the extra list in switching service are averaging 26 days per month.

Second: That when reductions are made they shall be in reverse order of seniority.

(b) When hired engineers are laid off on account of reduction in service, they will retain all seniority rights

provided they return to actual service within thirty days from the date their services are required. This rule also applies to firemen.

(c) Engineers taken off under this rule shall be returned to service as engineers in the order of their seniority as engineer, and as soon as it can be shown that engineers in assigned or extra passenger service can earn the equivalent of 4,800 miles per month; in assigned, pooled, chain-gang or other regular service paying freight rates the equivalent of 3,800 miles per month or in extra service the equivalent of 3,000 miles per month.

(d) In the regulations of passenger or other assigned service, sufficient men will be assigned to keep the mileage or equivalent thereof, within the limitations of 4,000 and 4,800 miles for passenger, and 3,200 and 3,800 miles for other regular service, as provided herein. If, in any service, additional assignments would reduce earnings below these limits regulation will be effected by requiring the regular assigned man, or men, to lay off when the equivalent of 4,800 miles in passenger or 3,800 miles in other service has been reached.

(e) Under this rule it is understood that after all engineers who have been taken off shall have been returned to service as engineers, this rule shall not apply with respect to further additions.

Note: In making reductions and replacing firemen on the service lists, the same mileage shall apply as in the case of engineers.

(f) After the foregoing provisions have been complied with no more firemen will be assigned than is necessary to move the traffic with promptness and dispatch.

(g) When the number of engineers on the extra list is reduced those who have been promoted from firemen and are affected by the reduction will take such runs as they are entitled to under their seniority rights. When again necessary to increase the number of engineers, such firemen will hold the same rights as engineers and formerly held by them and will be required to take service as engineers in their proper station, failing to do so, they will forfeit their seniority rights as firemen.

(h) Firemen cut off the extra list will be required to keep the Master Mechanic, or proper officials and the local Chairman of the Firemen's Organization posted as to their whereabouts, if expecting to return when the railroad needs additional firemen. Such firemen returning within thirty days after having been directed to do so by the Master Mechanic, or the Local Chairman, will retain their former seniority rights.

(i) Seniority lists will be posted on each Seniority District by the Railroad, January 1st and June 1st of each year.

(j) The Railroad will furnish the Local Chairman of the B. of L. F. & E. with a check of the earnings of men, in miles and hours, of the firemen in pooled, chain-gang, and extra freight service, at the end of each pay period.

Article 58: Promotion Rule.

(a) Firemen shall rank on the Firemen's roster from the date of their first service as firemen when called for such service, except as provided in Section (k), and when qualified shall be promoted to the position as engineers in accordance with the following rules:

(b) Firemen shall be examined for promotion according to seniority on the firemen's roster and those passing the required examination shall be given certificates of qualification, and when promoted shall hold their same relative standing in the service to which assigned.

(c) If for any reason the senior eligible fireman or engineer to be hired is not available and junior qualified fireman is promoted and used in actual service out of his turn, whatever standing the junior fireman so used, established, shall go to the credit of the senior eligible fireman or engineer to be hired provided the engineer to behired is available and qualified within thirty days. As soon as the senior fireman or engineer to be hired is available as provided herein, he shall displace the junior fireman who shall drop back into whatever place he would have held had the senior fireman to be promoted or engineer to be hired been available and the junior fireman not used.

Note: Qualifications, as referred to herein, is not intended to include learning of road or signals.

(d) As soon as a fireman is promoted he will be notified in writing by the proper official of the Railroad of the date of his promotion and unless he files a written protest within sixty days against such date, he cannot thereafter have it changed. When a date of promotion has been established in accordance with regulations, such dates shall be posted and if not challenged in writing within sixty days after such posting, no protest against such date shall afterwards be heard.

(e) No fireman shall be deprived of his rights to examination nor to promotion in accordance with his relative standing on the firemen's roster, because of any failure to take his examination by reason of the requirements of the Railroad's service, by sickness, or by proper leave of

absence, provided that upon his return, he shall be immediately called and required to take examination and accept proper assignment.

(f) The posting of notice of seniority rank, as per Section (d), shall be done within ten days following date of promotion, and such notice shall be posted on every bulletin board of the seniority District on which the man holds rank.

(g) Firemen having successfully passed qualifying examination shall be eligible as engineers. Promotion and the establishment of a date of seniority as engineer, as provided herein, shall date from the first service as engineer, when called for such service, provided there are no demoted engineers back firing. No demoted engineer will be permitted to hold a run as fireman on any seniority District while a junior engineer is working on the engineers' extra list or holding a regular assignment as engineer on such seniority district.

Note: On roads where promotion is to road service only, promotion and establishment of seniority dates as road engineers will obtain.

(h) On a seniority district where firemen are required to fire less than three years, all engineers will be hired;

If required to fire three and less than four years, one promoted to one hired;

If required to fire four and less than five years, two promoted to one hired;

If required to fire five and less than six years, three promoted to one hired;

If required to fire six and less than seven years, four promoted to one hired;

If required to fire seven and less than eight, five promoted to one hired.

On seniority districts where firemen are required to fire eight years or more, all engineers will be promoted.

The foregoing will not prevent Committees from having discharged engineers re-employed or reinstated on their former seniority districts at any time.

(i) If the engineer to be hired is not available when needed and the senior qualified fireman is promoted, the date of seniority thus established shall fix the standing of the hired engineer, who, if available, and qualified within thirty days from date senior qualified fireman is promoted, will rank immediately ahead of the promoted fireman. The promoted fireman will retain his date of seniority as engineer and will be counted in proportion of promotion.

(j) In case an engineer is hired and used in actual service, when under requirements of Section (h) a fireman, or firemen, should have been promoted, the date of seniority thus established shall fix the standing of the senior qualified fireman or firemen due to be promoted, providing he or they are eligible and qualified within thirty days who shall rank immediately ahead of the hired engineer on the engineers' seniority list. The hired engineer will retain his date of seniority and he counted in proportion of engineers to be hired.

(k) The seniority date of the hired engineer shall be the date of his first service as engineer, except as pro-

vided in Section (c), (i) and (J) of this Article. It is further provided that engineers hired or permanently transferred from one seniority district to another on any railroad, shall be given a date of seniority as fireman corresponding with their date as engineer.

(l) Should a fireman fail to pass the required mechanical and time card examination he shall be given another examination at his request within thirty days. Should he fail at the second examination he shall be given another examination on application within six months; should he fail at the third examination he shall be assigned as the junior fireman in regular freight service and shall hold that turn for a re-examination, when if he fails he will be assigned to other service or be dismissed.

(m) Should a fireman feel that he has been unjustly dealt with in his examination, he shall have the right to another examination within thirty days upon written request filed with the Master Mechanic, or proper official, at which examination he may have present any employee of his choice who has passed the examination.

(n) Firemen who entered the service of the railroads prior to January 1, 1905, will not be required to take examination for promotion unless they so desire.

Article 86: All rulings in reference to any article of this agreement shall be made in writing only by the official signing this agreement, and the General Chairman of the Firemen's Committee will be furnished with a copy of such rulings, but such rulings shall not be made effective until agreed to between the parties herein mentioned.

Article 87: The foregoing rates and rules where affected by Supplement No. 24 to General Order No. 27 became effective December 1st, 1919. Other rules effective October 1st, 1918; no change in this agreement nor any departure therefrom will be made by either party hereto without thirty (30) days' notice in writing thereof served on the other party.

For

MISSOURI, KANSAS & TEXAS RAILROAD,
C. N. WHITEHEAD,
General Manager.

For

MISSOURI, KANSAS & TEXAS RAILROAD OF TEXAS,
WICHITA FALLS & NORTHWESTERN RAILROAD,
W. A. WEBB,
General Manager.

For

THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN,
M. O. LAISURE,
General Chairman, General Grievance Committee.

Mr. Wight:
That is all for the defendant.

Defendant rests.

275 CARL J. GOFF, a witness for the Third Party Defendant, being first duly sworn, examined in chief by Mr. Heiss, testified as follows:

Q. State your name?

A. Carl J. Goff.

Q. You are Assistant President of the Locomotive Brotherhood of Firemen and Enginemen?

A. I am.

Q. What kind of organization is that?

A. It is an unincorporated association, voluntary association, national in scope, representing men in engine service, on the railroads of the United States and Canada.

Q. Is it a railway labor organization?

A. Yes, sir.

Q. What class of employees are admitted as members?

A. Locomotive engineers, firemen, hostlers and hostler-helpers.

Q. Will you give a brief resume of your experience as a brotherhood official on the railroads?

A. I first entered the service in December, 1904, in Alabama, I left that service in the latter part of 1905, and took up work as a locomotive fireman on the Seaboard Airline in March, 1906, I left that railroad in June, 1907, and in July, 1907 returned to the Southern Railway. I continued in the service as locomotive fireman until June, 1911, at which time I was elected general chairman for the Brotherhood of Locomotive Fireman and Enginemen on the Southern Railway System. I continued in that service until August 31, 1919.

The Court:

What is the object of this?

Mr. Madden:

We object to it as encumbering the record.

The Court:
Yes.

Q. You have been an assistant president since 1937?
A. January 1, 1938.
Q. Does the General Grievance Committee of the Brotherhood of Locomotive Firemen and Engineers correspond to another committee of like character in the BofLE?
A. It does.
Q. Mr. Goff, have you had prepared from the records of your organization, a compilation showing the number of men working on the Missouri-Kansas-Texas Railroad, as of January 15, 1941, who are working as engineers?
A. I have.
Q. The number working as firemen, and which were members of your organization?
A. I have.
Q. Have you that with you?
A. I have.

Mr. Heiss:
May this be marked as "Third Party Defendant's Exhibit No. 3"?

Mr. Madden:
We admit they are the representative of the Brotherhood of Firemen and Enginemen.

Mr. Heiss:
Somewhat similar information was produced on their behalf this morning, and this is comparable information only as respect to this organization. I offer this exhibit in evidence.

(Marked "Third Party Defendant's Exhibit No. 3", and reading as follows:)

THIRD PARTY DEFENDANTS EX. 3.

Recapitulation

Missouri-Kansas-Texas

Seniority District.

Railroad.

Status of Employment.
Date 1-15-41.

	Members of B. L. F. & E.	Not Members B. L. F. & E.	Total	Per cent Members B. L. F. & E.
Working as Engineers & Motormen	92	229	321	28.6
Working as Firemen & Helpers:				
Demoted engineers	143	26	169	84.6
White (unpromoted) men	146	23	169	86.3
Colored men	...	...	...	...
Total	289	49	338	85.5
Working as Hostlers & Helpers:				
Demoted engineers	12	1	13	92.3
White (unpromoted) men	16	8	24	66.6
Colored men	...	...	...	...
Total	28	9	37	75.6

Furloughed or Cut Off List:				
Demoted engineers	18 no firing rts. 9	30	39	23.0
White (unpromoted) men	21	78	99	21.2
Colored men	...	...	...	...
Total	30	108	138	21.7
Sick or on Leave of Absence	13	10	23	56.5
Pensioned or Retired	799	571	1370	58.4
Company Official	2	5	7	28.5
Brotherhood Representative	2	1	3	66.6
Total	456	411	867	52.5

	Number	Percentage
Engineers on Roster 561 Members of B. L. F. & E.	263	46.8
Not Members of B. L. F. & E.	298	53.2
Total	561	100.0

(By Mr. Heiss):

Q. Have you been familiar, for some time past, with the contracts called schedules of the engineers and firemen working on the Missouri-Kansas-Texas?

A. I have, a number of years.

Q. Have you had occasion to give them particular study?

A. I have for the last three or four years.

Q. Now, with reference to this particular railroad, will you explain to the Court how a man gets to be a fireman, what he has to do, and how he gets to be an engineer on this railroad?

A. In the first place, there must be a demand for additional firemen. In that event, the officer of the railroad who has authority to employ new men, having selected an applicant he desires to give employment to, permits him to fill out an application for employment, if he passes the required physical examination he is then given a permit to ride over the railroad on a locomotive in order to learn the duties of a fireman. Having learned those duties, he is then required to pass another examination in respect to his knowledge of operating conditions. If he passes that examination, he is then marked up on the firemen's extra list. He actually becomes an employee when he first makes a trip as a fireman. From that date, he establishes seniority.

Q. How does he get to be an engineer?

A. After serving as a fireman over a period of time, and when additional engineers are needed, and having passed the qualifying examinations, he is then called for service as a locomotive engineer, and becomes an engineer when he first begins his service in that capacity.

Q. He begins his service in that capacity when he makes his first trip as an engineer?

A. That is right.

Q. Does he retain his capacity as a fireman?

A. He does.

Q. On these railroads, is there any requirement that the firemen qualify as an engineer?

A. They are required to qualify for promotion to an engineer.

Q. Is there any penalty for not qualifying?

A. Yes, after two or three tries, if they fail to pass the qualifying examinations, they are dismissed from the service.

Q. When a man gets a seniority date, as an engineer, does that entitle him to a right to work and work every day as an engineer, if he wants to?

A. No.

Q. What conditions have to be brought about?

A. He works as an engineer only when there is more work than those assigned to the engineers working list can perform. He is a seniority man who has passed the examination and has been promoted as an engineer, then he is called to service.

Q. Does it frequently happen a man, after he is promoted as an engineer, works a long while as a fireman?

A. Oh, yes, twenty-five and thirty years, in some instances.

Q. Has it always been true, on this railroad, that promoted engineers can come back firing?

A. Yes, sir, at least for the last forty or forty-five years.

Q. Was there any time in the history of railroads, when it was the rule and practice to prohibit engineers to return to firing positions?

A. Oh, yes, sir, on some railroads.

Q. Reference has been made to the Chicago Joint Agreement, in the answer and the reply, what was that agreement?

A. That was an instrument between the Brotherhood of Locomotive Engineers and the Brotherhood of Locomo-

tive Firemen and Enginemen, originally effective July 1, 1913, and amended in 1918, and again in 1923.

Q. What was the object of that agreement?

A. The object of the agreement was to establish uniform methods under which firemen would be promoted to engineers. Uniform conditions under which firemen would be called for service as engineers, after having been promoted and returned to firing service. Uniform regulations permitting men who had been promoted from fire service, when there was no work for them as engineers, and returned to fire service. And it also provided the method of disposing of controversial questions and jurisdictional questions between the two organizations.

Q. Who negotiated the efforts to bring about the Chicago Joint Agreement?

A. Representatives of the Locomotive Firemen and Enginemen, first in 1878, and again in 1885, and another time in 1910, and again in 1912.

Q. I hand you Third Party Defendant's Exhibits 4, 5, and 6, and ask you what they are?

A. Four is the original Chicago Agreement between the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen. Five is the revised Chicago Joint Agreement between those organizations, effective May 4, 1918. Six is the revision of that agreement as of May 1, 1923.

Mr. Heiss:

We offer these instruments in evidence.

(Marked "Third Party Defendant's Exhibits 4, 5 and 6".)

283 THIRD PARTY DEFENDANT'S EXHIBIT 4.

Chicago Joint Agreement
Between the
Brotherhood of Locomotive Engineers
and
Brotherhood of Locomotive Firemen and
Enginemen

May 17, 1913.

Articles 1, 2, 7c, 12a, 10, 11, 14, as follows:

Article 1: (a) We affirm the right to make an interpret contracts, rules, rates and working agreements for locomotive engineers shall be vested in the regularly constituted committee of the Brotherhood of Locomotive Engineers, and, conversely, the right to make and interpret contracts, rules, rates and working agreements for locomotive firemen and hostlers, shall be vested in the Brotherhood of Locomotive Firemen and Enginemen: Provided, that on roads where but one organization has representation or maintains a committee, such organization shall have the right to negotiate schedules for all men in engine service:

(b) Where joint agreements are made in the future the two committees shall endeavor to obtain yard engineers' rate of pay for hostlers required to make main line movements, and when such rate is obtained, these positions shall be filled by engineers as fast as vacancies occur.

Article 2: In case of a dispute between the two organizations which the joint committees or officers placed in charge thereof fail to adjust, the matter shall be

referred to the two Chief Executives with a statement of the facts upon which each side base their contentions. The two Executives shall consider and decide the matter in controversy and their decision shall be final. In case the Chief Executives fail to agree the matter shall be submitted to arbitration and the decision of the Arbitrators shall be final. When a decision has been reached as above provided, both organizations shall unite in enforcing such decision.

Article 7: (c) When a strike is called by one organization the members of the other organization shall not perform any service that was being performed, before the strike was called, by the members of the organization who are on strike.

Article 10: (a) Firemen shall rank on the firemen's roster from the date of their first service as firemen when called for such service, and when qualified shall be promoted to positions as engineers in accordance with the following rules:

(b) Firemen shall be examined for promotion according to seniority on the Firemen's roster; and those passing the required examination shall be given certificates of qualification, and when promoted shall hold their same relative standing in the service to which assigned.

(c) If for any reason the senior eligible firemen are not available and a junior qualified fireman is promoted and used in actual service out of his turn, whatever standing the junior fireman so used establishes shall go to the credit of the senior eligible fireman. As soon as the senior fireman is available he shall displace the junior fireman, who shall drop back into whatever place he would have held had the senior fireman been available and the junior fireman not used.

(d) As soon as a fireman is promoted he will be notified in writing by the proper official of the company of the date of his promotion, and unless he file a written protest within sixty days against such date he cannot thereafter have it changed. When a date of promotion has been established in accordance with regulations, such date shall be posted and if not challenged in writing within sixty days after such posting, no protest against such date shall afterwards be heard.

(e) No fireman shall be deprived of his rights to examination nor to promotion in accordance with his relative standing on the firemen's roster, because of any failure to take his examination by reason of the requirements of the company's service, by sickness, or by other proper leave of absence, provided: That upon his return he shall be immediately called and required to take examination and accept proper assignment.

(f) The posting of notice of seniority rank, as per section (d) shall be done within ten days following date of promotion and such notice shall be posted on every bulletin board of the seniority district on which the man holds rank.

(g) Firemen having successfully passed the qualifying examination shall be eligible as engineers. Promotion and the establishment of a seniority date as engineer, as provided herein, shall date from the first service as engineer, when called for such service.

Note: On roads where promotion is to road service only, promotion and establishment of seniority date as road engineer will obtain.

(h) The seniority date of a hired engineer shall be the date of his first service as engineer.

Article 11: (a) When, from any cause, it becomes necessary to reduce the number of engineers on the engineers' working lists, those thus taken off, who have been promoted from the ranks of the firemen on any seniority district, may, if they so elect, displace any fireman their junior on that seniority district, under the following conditions:

First: That no reductions will be made, so long as those in pooled or chain-gang freight service are averaging the equivalent of 3,000 miles per month; or, on the road extra list, are averaging the equivalent of 2,200 miles per month, or those on the extra list in switching service are averaging as much as 22 days per month.

Second. That when reductions are made, they shall be in reverse order of seniority.

(b) When hired engineers are laid off on account of reduction in service, they will retain all seniority rights; provided, they return to actual service within 30 days from the date their services are required.

(c) Engineers taken off under this rule shall be returned to service as engineers, in the order of their seniority as engineers, and as soon as it can be shown that engineers in pooled or chain-gang freight service can earn the equivalent of 3,500 miles, or in extra service the equivalent of 2,600 miles per month.

(d) Under this rule it is understood that after all engineers who have been taken off have been returned to service as engineers this rule shall not apply with respect to further additions.

(e) It shall be the policy of both organizations, when working jointly, to insist upon having a guaranteed month-

ly wage of not less than $100 for all extra engineers and not less than $65 for all extra firemen retained in service, and when a minimum wage is guaranteed no reductions in the force will be insisted upon by either organization.

Note: In making reductions and replacing firemen upon the service lists, the same mileage shall apply as in the case of engineers, except that the rules shall not apply to firemen in switching service.

Article 12: (a) For the purpose of securing better wages and better working conditions and affording protection to their members, it is hereby agreed that the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen on the .....railroad will work jointly.

Article 14: Laws of either organization which interfere in any manner with the proper execution of this agreement shall be so amended as to avoid confliction therewith.

289 THIRD PARTY DEFENDANT'S EXHIBIT 5.

Chicago Joint Agreement
Between the Brotherhood of Locomotive
Engineers and Brotherhood of Locomotive
Firemen and Enginemen.

May 17, 1913.

Revised at Cleveland May 4, 1918:

Articles 1, 2, 10, and 11, as follows:

Article 1: (a) We affirm the right to make and interpret contracts, rules, rates and working agreements for,

locomotive engineers shall be vested in the regularly constituted committee of the Brotherhood of Locomotive Engineers, and, conversely, the right to make and interpret contracts, rules, rates and working agreements for locomotive firemen and hostlers, shall be vested in the Brotherhood of Locomotive Firemen and Enginemen; provided, That on roads where but one organization has representation or maintains a committee, such organization shall have the right to negotiate schedules for all men in engine service.

(b) Where joint agreements are made in the future the two committees shall endeavor to obtain yard engineers' rate of pay for hostlers required to make main line movements, and when such rate is obtained these positions shall be filled by engineers as fast as vacancies occur.

Article II: In case of a dispute between the two organizations which the joint committees or officers placed in charge thereof, fail to adjust, the matter shall be referred to the two Chief Executives, with a statement of the facts upon which each side base their contentions. The two Chief Executives shall consider and decide the matter in controversy, and their decisions shall be final. In case the Chief Executives fail to agree the matter shall be submitted to arbitration and the decision of the arbitrators shall be final. When a decision has been reached, as above provided, both organizations shall unite in enforcing such decision.

Article X: (a) Firemen shall rank on the firemen's roster from the date of their first service as firemen when called for such service, except as provided in Section (k), and when qualified shall be promoted to positions as engineers in accordance with the following rules:

(b) Firemen shall be examined for promotion according to seniority on the Firemen's roster, and those passing the required examination shall be given certificates of qualification, and when promoted shall hold their same relative standing in the service to which assigned.

(c) If for any reason the senior eligible fireman or engineer to be hired is not available and junior qualified fireman is promoted and used in actual service out of his turn, whatever standing the junior fireman so used establishes shall go to the credit of the senior eligible fireman or engineer to be hired, provided the engineer to be hired is available and qualifies within thirty days. As soon as the senior fireman or engineer to be hired is available, as provided herein, he shall displace the junior fireman, who shall drop back into whatever place he would have held had the senior fireman to be promoted or engineer to be hired been available and the junior fireman not used.

Note: Qualification, as referred to herein, is not intended to include learning of road or signals.

(d) As soon as a fireman is promoted he will be notified in writing by the proper official of the company of the date of his promotion, and unless he file a written protest within sixty days against such date he cannot thereafter have it changed. When a date of promotion has been established in accordance with regulations, such date shall be posted and if not challenged in writing within sixty days after such posting, no protest against such date shall afterwards be heard.

(e) No fireman shall be deprived of his rights to examination, nor to promotion in accordance with his relative standing on the firemen's roster, because of any

failure to take his examination by reason of the requirements of the company's service, by sickness, or by other proper leave of absence: Provided, That upon his return he shall be immediately called and required to take examination and accept proper assignment.

(f) The posting of notice of seniority rank, as per section (d), shall be done within ten days following date of promotion and such notice shall be posted on every bulletin board of the seniority district on which the man holds rank.

(g) Firemen having successfully passed qualifying examination shall be eligible as engineers. Promotion and the establishment of a date of seniority as engineer as provided herein, shall date from the first service as engineer, when called for such service, provided there are no demoted engineers back firing. No demoted engineer will be permitted to hold a run as fireman on any seniority district while a junior engineer is working on the engineers' extra list or holding a regular assignment as engineer on such seniority district.

Note: On roads where promotion is to road service only, promotion and establishment of seniority date as road engineer will obtain

(h) On a seniority district where firemen are required to fire less than three years, all engineers will be hired:

If required to fire 3 and less than 4 years, 1 promoted and 1 hired;

If required to fire 4 and less than 5 years, 2 promoted to 1 hired;

If required to fire 5 and less than 6 years, 3 promoted to 1 hired;

If required to fire 6 and less than 7 years, 4 promoted to 1 hired;

If required to fire 7 and less than 8 years, 5 promoted to 1 hired.

On seniority districts where firemen are required to fire eight years or more, all engineers will be promoted.

The foregoing will not prevent committees from having discharged engineers re-employed or reinstated on their former seniority districts at any time.

(i) If the engineer to be hired is not available when needed and the senior qualified fireman is promoted, the date of seniority thus established shall fix the standing of the hired engineer, who, if available and qualified within thirty days from date senior qualified fireman is promoted, will rank immediately ahead of the promoted fireman. The promoted fireman will retain his date of seniority as engineer and will be counted in proportion of promotions.

(j) In case an engineer is hired and used in actual service when, under requirements of section (h), a fireman (or firemen) should have been promoted the date of seniority thus established shall fix the standing of the senior qualified fireman (or firemen) due to be promoted, providing he or they are eligible and qualify within thirty days, who shall rank immediately ahead of the hired engineer on the engineers' seniority list. The hired engineer will retain his date of seniority and be counted in proportion of engineers to be hired.

(k) The seniority date of the hired engineer shall be the date of his first service as engineer, except as provided in Sections (c), (i) and (j) of this Article. It is further provided that engineers hired, or permanently transferred from one seniority district to another on any railroad, shall be given a date of seniority as fireman corresponding with their date as engineer.

Article XI: (a) When, from any cause, it becomes necessary to reduce the number of engineers on the engineers' working lists on any seniority district, those taken off may, if they so elect, displace any fireman their junior on that seniority district under the following conditions:

First: That no reductions will be made so long as those in assigned or extra passenger service are earning the equivalent of 4000 miles per month; in assigned, pooled or chain-gang freight, or other service paying freight rates, are averaging the equivalent of 3,200 miles per month; on the road extra list are averaging the equivalent of 2600 miles per month, or those on the extra list in switching service are averaging 26 days per month.

Second: That when reductions are made they shall be in reverse order of seniority.

(b) When hired engineers are laid off on account of reduction in service, they will retain all seniority rights: Provided, they return to actual service within 30 days from the date their services are required. This rule also applies to firemen.

(c) Engineers taken off under this rule shall be returned to service as engineers in the order of their seniority as engineers, and as soon as it can be shown that

engineers in assigned or extra passenger service can earn the equivalent of 4800 miles per month; in assigned, pooled, chain-gang or other regular service paying freight rates, the equivalent of 3800 miles per month, or in extra service the equivalent of 3000 miles per month.

(d) In the regulation of passenger or other assigned service, sufficient men will be assigned to keep the mileage or equivalent thereof within the limitations of 4000 and 4800 miles for passenger, and 3200 and 3800 miles for other regular service, as provided herein. If, in any service, additional assignments would reduce earnings below these limits, regulation will be effected by requiring the regular assigned man or men to lay off when the equivalent of 4800 miles in passenger or 3800 miles in other regular service has been reached.

(e) Under this rule it is understood that after all engineers who have been taken off have been returned to service as engineers, this rule shall not apply with respect to further additions.

(f) It shall be the policy of both organizations, when working jointly, to insist upon having a guaranteed monthly wage of not less than 25 days for all extra engineers and extra firemen retained in service, and when this is guaranteed no reductions in the force will be insisted upon by either organization.

Note: In making reductions and replacing firemen upon the service lists, the same mileage shall apply as in the case of engineers.

296 THIRD PARTY DEFENDANT EXHIBIT 6.

Chicago Joint Agreement
Between the Brotherhood of Locomotive Engineers
and Brotherhood of Locomotive Firemen and
Enginemen.

May 17, 1913.

Revised at Cleveland
May 4, 1918
May 1, 1923.

Articles 1, 2, 10 and 11, as follows:

Article 1: (a) We affirm the right to make and interpret contracts, rules, rates and working agreements for locomotive engineers shall be vested in the regular constituted committee of the Brotherhood of Locomotive Engineers, and, conversely, the right to make and interpret contracts, rules, rates and working agreements for locomotive firemen and hostlers, shall be vested in the Brotherhood of Locomotive Firemen and Enginemen; provided, That on roads where but one organization has representation or maintains a committee, such organization shall have the right to negotiate schedules for all men in engine service.

(b) Where joint agreements are made in the future the two committees shall endeavor to obtain yard engineers' rate of pay for hostlers required to make main line movements, and when such rate is obtained these positions shall be filled by engineers as fast as vacancies occur.

Article II: In case of a dispute between the two organizations which the joint committees or officers placed

in charge thereof, fail to adjust, the matter shall be referred to the two Chief Executives, with a statement of the facts upon which each side base their contentions. The two Chief Executives shall consider and decide the matter in controversy, and their decision shall be final. In case the Chief Executives fail to agree the matter shall be submitted to arbitration and the decision of the arbitrators shall be final. When a decision has been reached, as above provided, both organizations shall unite in enforcing such decision.

Article X: (a) Firemen shall rank on the firemen's roster from the date of their first service as firemen when called for such service, except as provided in Section (k), and when qualified shall be promoted to positions as engineers in accordance with the following rules:

(b) Firemen shall be examined for promotion according to seniority on the Firemen's roster, and those passing the required examination shall be given certificates of qualification, and when promoted shall hold their same relative standing in the service to which assigned.

(c) If for any reason the senior eligible fireman or engineer to be hired is not available and junior qualified fireman is promoted and used in actual service out of his turn, whatever standing the junior fireman so used establishes shall go to the credit of the senior eligible firemen or engineer to be hired, provided the engineer to be hired is available and qualifies within thirty days. As soon as the senior fireman or engineer to be hired is available, as provided herein, he shall displace the junior firemen, who shall drop back into whatever place he would have held had the senior fireman to be promoted or engineer to be hired been available and the junior fireman not used.

Note: Qualification, as referred to herein, is not intended to include learning of road or signals.

(d) As soon as a fireman is promoted he will be notified in writing by the proper official of the company of the date of his promotion, and unless he files a written protest within sixty days against such date he cannot thereafter have it changed. When the Date of Promotion of a Fireman or the Date of a Hired Engineer or Fireman Has Been Established in Accordance With Regulations, Such Date Shall Be Posted and If Not Challenged in Writing Within Sixty Days After Such Posting, No Protest Against Such Date Shall Afterwards Be Heard.

(e) No fireman shall be deprived of his rights to examination, nor to promotion in accordance with his relative standing on the firemen's roster, because of any failure to take his examination by reason of the requirements of the company's service, by sickness, or by other proper leave of absence; Provided, That upon his return he shall be immediately called and required to take examination and accept proper assignment.

(f) The posting of notice of seniority rank, as per section (d), shall be done within ten days following date of promotion and such notice shall be posted on every bulletin board of the seniority district on which the man holds rank.

(g-1) Firemen having successfully passed qualifying examination shall be eligible as engineers. Promotion and the establishment of a date of seniority as engineer, as provided herein, shall date from the first service as engineer, when called for such service, provided there are no demoted engineers back firing. No demoted en-

gineer will be permitted to hold a run as fireman on any seniority district while a junior engineer is working on the engineers' extra list or holding a regular assignment as engineer on such seniority district.

Note: On roads where promotion is to road service only, promotion and establishment of seniority date as road engineer will obtain.

(g-2) Firemen having successfully passed qualifying examinations shall be eligible as engineers. Promotion and the establishment of a date of seniority as engineer, as provided herein, shall date from the first service as engineer, when called for such service, provided there are no demoted engineers back firing. No demoted engineer will be permitted to hold a run as fireman out of any terminal on a seniority district while a junior engineer is working on the engineers' extra list, or holding an assignment as engineer out of such terminal; it being understood that an engineer cut off the engineers' extra list at any terminal on a seniority district may displace any engineer his junior on that seniority district; it being further understood that engineers will be required to fill all positions of engineers on any seniority district before firemen are promoted, or engineers hired on that seniority district.

Note: On Any Seniority District Where a Division of the B. of L. E. and a Lodge of the B. of L. F. & E. Desire to Put Paragraph (g-2) in Effect, a Referendum Vote of the Members of All Divisions and Lodges on That Seniority District, Must Be Taken, and the Expense of Taking the Vote Must Be Borne By Each Division and Lodge for Voting Their Members. If a Majority of the Members of Each Organization Vote in Favor of Putting Paragraph (g-2) in Effect, They Will Notify the

General Chairmen, Who Will Put Paragraph (g-2) in Effect on That Seniority District. When Paragraph (g-2) Is Adopted on a Seniority District of a Railroad System, It Will Remain in Effect Until a Majority of the Members of Either Organization on That Seniority District Decide Through a Referendum Vote, and Thirty Days Notice Has Been Served on the Other Organization, to Discontinue the Rule. After a Referendum Vote Has Been Taken to Discontinue the Rule, Such Thirty Days' Notice Will Be Served in Writing By the General Chairman of the Organization Desiring the Change Upon the General Chairman of the Other Organization. Upon the Expiration of Such Thirty Days' Notice, or, in Case of Failure to Secure a Majority Vote By Either Organization for the Adoption or Paragraph (g-2) It Is Understood That Paragraph (g-1) Is in Effect.

(h) On a seniority district where firemen are required to fire less than three years, all engineers will be hired:

If required to fire 3 and less than 4 years, 1 promoted and 1 hired;

If required to fire 4 and less than 5 years, 2 promoted to 1 hired;

If required to fire 5 and less than 6 years, 3 promoted to 1 hired;

If required to fire 6 and less than 7 years, 4 promoted to 1 hired;

If required to fire 7 and less than 8 years, 5 promoted to 1 hired;

On seniority districts where firemen are required to fire eight years or more, all engineers will be promoted.

The foregoing will not prevent committees from having discharged engineers re-employed or reinstated on their former seniority districts at any time.

(i) If the engineer to be hired is not available when needed and the senior qualified fireman is promoted, the date of seniority thus established shall fix the standing of the hired engineer, who, if available and qualified within thirty days from date senior qualified fireman is promoted, will rank immediately ahead of the promoted fireman. The promoted fireman will retain his date of seniority as engineer and will be counted in proportion of promotions.

(j) In case an engineer is hired and used in actual service when, under requirements of section (h), a fireman (or firemen) should have been promoted, the date of seniority thus established shall fix the standing of the senior qualified fireman (or firemen) due to be promoted, providing he or they are eligible and qualify within thirty days, who shall rank immediately ahead of the hired engineer on the engineers' seniority list. The hired engineer will retain his date of seniority and be counted in proportion of engineers to be hired.

(k) The seniority date of the hired engineer shall be the date of his first service as engineer, except as provided in Sections (c), (i) and (j) of this Article. It is further provided that engineers hired, or permanently transferred from one seniority district to another on any railroad, shall be given a date of seniority as fireman corresponding with their date as engineer.

Article XI: Section 1. (a) When, from any cause, it becomes necessary to reduce the number of engineers on the engineers' working lists on any seniority district, those taken off may, if they so elect, displace any fireman their junior on that seniority district under the following conditions:

(b) When reductions are made, they shall be in reverse order of seniority, Except As Provided in Paragraph (g-2), Article X, When in Effect. No reductions will be made so long as those in extra passenger service are averaging the equivalent of 4,000 miles per month; in pooled, chain gang or any other Unassigned service paying freight rates are averaging the equivalent of 3,200 miles per month; on the road extra list are averaging the equivalent of 2,400 miles per month; on the yard extra list are averaging the equivalent of 25 days per month.

(c) When hired engineers or firemen are laid off on account of reduction in service, they will retain all seniority rights; provided, they return to actual service within thirty (30) days from the date their services are required.

(d) Engineers Or Firemen taken off under this rule shall be returned to service as engineers, Or Firemen in the order of their seniority And in Their Respective Class of Service, as Soon as It Can Be Shown That Men in Extra Passenger Service Average the Equivalent of 4,300 Miles Per Month; in Pooled, Chain Gang or Any Other Unassigned Service Paying Freight Rates Average the Equivalent of 3,500 Miles Per Month; In Road Extra Service Average the Equivalent of 3,100 Miles Per Month; in Yard Extra Service Average the Equivalent of Thirty (30) Days Per Month.

(e) In Returning Engineers and Firemen to Service Under Section 1, Paragraph (D), Sufficient Number of Men Will Be Added to the Working List to Keep the Mileage Between the Maximum Stipulated in Paragraph (D) and the Minimum Stipulated in Paragraph (B). If an Additional Assignment Would Reduce the Mileage Below the Minimum Stipulated in Paragraph (B) for the Same Class of Service, Regulation Will Be Made By Requiring Each Man in the Class of Service Affected to Lay Off When He Has Earned the Equivalent of the Maximum Mileage Stipulated in Paragraph (D).

Note—Under the Provisions of This Paragraph, It Is Understood That If at a Checking Period It Is Found That the Mileage in a Pool Averages the Equivalent of 3,500 Miles Per Month and a Man Could Not Be Added to the Pool Without Reducing the Average Mileage Below 3,200 Miles Per Month, Regulation Will Be Effected in the Following Checking Period By Taking the Individual Man Off When He Has Made the Equivalent of 3,500 Miles Per Month, With the Understanding That a Man Will Be Permitted to Make an Additional Trip Provided the Preceding Trip Did Not Bring Him Up to the Equivalent of 3,500 Miles Per Month and With the Further Understanding That the Mileage of the Last Trip Would Not Make His Total Mileage for the Month in Excess of 3,800 Miles.

Section 2. After All Engineers or Firemen Have Been Returned to Service, the Following Regulations Will Apply With Respect to Further Additions to the Working Lists:

(a) In the Regulation of Extra Passenger Service, Sufficient Number of Men Will Be Assigned to Keep the Mileage or Equivalent Thereof Within the Limitations

of 4,000 and 4,800 Miles Per Month; in Pooled, Chain Gang or Any Other Unassigned Service Paying Freight Rates, 3,500 and 3,800 Miles Per Month; in Road Extra Service, 3,100 and 3,800 Miles Per Month: In Yard Extra Service, 30 and 34 Days Per Month.

(b) When the Mileage of Men in Either of the Classes of Service Specified in Section 2, Paragraph (A), Averages in Excess of the Maximum Stipulated Therein, and an Additional Assignment Would Reduce the Mileage Below 4,000 Miles Per Month in Extra Passenger Service; 3,500 Miles Per Month in Pooled, Chain Gang or Any Other Unassigned Service, Paying Freight Rates; 3,100 Miles Per Month in Road Extra Service; or 30 Days Per Month in Yard Extra Service, Regulation Will Be Made By Requiring Each Man in the Class of Service Affected to Lay Off When He Has Earned the Equivalent of the Maximum Mileage Stipulated in Paragraph (A).

Note:—Under the Provisions of This Section, It Is Understood That If at a Checking Period, It Is Found That the Mileage in Extra Passenger Service Averages in Excess of the Equivalent of 4,800 Miles Per Month; in Pooled, Chain Gang or Any Other Unassigned Service Paying Freight Rates Averages in Excess of the Equivalent of 3,800 Miles Per Month; in Road Extra Service Averages in Excess of the Equivalent of 3,800 Miles Per Month; in Yard Extra Service Averages in Excess of the Equivalent of 34 Days Per Month, and If Regulations Cannot Be Made By Assigning Men Without Reducing the Average Below the Minimum as Stipulated, Then Regulations Will Be Effected in the Following Checking Period By Taking the Individual Man or Men Off So That Earnings Will Not Exceed the Maximum for Each Class of Service as Set Forth in Section 2 (A).

Section 3. In the Regulation of Assigned Passenger Service, a Sufficient Number of Men Will Be Assigned to Keep the Mileage or Equivalent Thereof Within the Limitations of 4,000 and 4,800 Miles Per Month: In Assigned Service Paying Freight Rates, a Sufficient Number of Men Will Be Assigned to Keep the Mileage or Equivalent Thereof Within the Limitations of 3,200 and 3,800 Miles Per Month. To Keep Within the Mileage Limitations Set Fourth in This Section, Additional Crews May Be Added or Swing Men Used to Relieve the Regular Men on Specified Days. If Regulation Cannot Be Made as Provided Herein, Men Will Be Required to Lay Off So That the Equivalent of 4,800 Miles in Passenger, or 3,800 Miles in the Other Assigned Service, Will Not Be Exceeded.

Section 4. In Assigned Yard Service, Regulation Will Be Made By Requiring Each Regularly Assigned Man to Lay Off When He Has Earned the Equivalent of 35 Days Per Month.

Section 5. In Regulating the Working Lists in the Respective Classes of Service, Each List Will Be Handled Separately.

Section 6. Arrangements for Keeping Record of the Mileage of Engineers and Firemen Will Be Made Between the Railroad Officials and Committees, and Engineers and Firemen Will Be Required, Upon the Completion of Each Trip, to Register Their Trip Mileage or Equivalent Thereof.

Section 7. General Committees Will Jointly Agree Upon a Stipulated Period for Checking and Regulating the Mileage Each Month; Provided, That the Period Must Be 10, 15 or 30 Days. Failing to Mutually Agree, It Will

Be Understood That the 15-Day Period Will Apply. Local Chairmen Will Work Jointly in Checking the Mileage and Assigning Men. When the Mileage Has Been Checked and the Number of Crews Assigned in Accordance With Mileage Limitations, There Will Be No Further Computations or Adjustments Made During the Same Period.

Section 8. There Should Be a Uniform Application of These Mileage Limitations for Both Engineers and Firemen in the Same Class of Service, But in Case of Disagreement, Each Organization Is Authorized to Regulate the Mileage for the Class of Service It Represents, With the Understanding That the Mileage Regulations of This Article Will Be Adhered to.

Section 9. It shall be the policy of both organizations, when working jointly, to insist upon having a guaranteed monthly wage of not less than 24 days for all extra engineers and extra firemen retained in service, and when this is guaranteed, no reductions in the force will be insisted upon by either organization.

Mr. Madden:

We object to the introduction of each of them in evidence, unless it can be shown that those agreements are still in force and effect. I suppose counsel will admit those agreements were canceled in 1927. I don't see how they can shed any light on the matters now before the Court, but serve only to encumber the record.

The Court:

I will hear from counsel.

Mr. Heiss:

Your Honor, these are very largely in self-defense. There is the contention in Paragraph 8 of the amended

complaint, that what the firemen and the railroad have done in this case is in violation of the engineers agreement of October 1, 1918. That agreement, the Chicago Joint Agreement, and many of the provisions of the Chicago Joint Agreement, were put into the engineers schedule, and the firemen's schedule on this railroad.

The Court:

I overrule the objection.

(By Mr. Heiss):

Q. Is the Chicago Agreement in effect?

A. It is not as an agreement between the two organizations.

Q. Was it canceled at any time?

A. It was canceled effective October 1, 1927.

Q. At whose instance?

A. Brotherhood of Locomotive Engineers.

Q. During its existence, did disputes such as this arise between the two organizations?

A. Yes.

Mr. Madden:

I don't see where it is material about the disputes that arose prior to 1927.

The Court:

Well, I don't either. I don't think it hurts anybody very much, it shows they have been fussing before.

Mr. Heiss:

May I offer this suggestion. The rules in the agreement which the plaintiffs say we have violated, are the identical rules that are in the Chicago Joint Agreement. There was a direction set up between these two organizations for construing those rules in the Chicago Joint

Agreement, whatever application those constructions had with the Chicago Joint Agreement must necessarily apply to the identical language contained in the schedule. The B of LE joined in making those rules and interpretations which are identical in those agreements.

The Court:

He objects to your asking whether you squabbled before. I don't think that it helps any.

Mr. Heiss:

Well, I won't press the question. I will ask the witness another question.

Q. Whether those disputes were disposed of under the Chicago Joint Agreement?

A. They were, yes, sir.

Q. What was the machinery?

Mr. Madden:

I don't want to continually object to this, but I would like to make myself clear. The joint agreement was a joint agreement as it appears from the agreements themselves, between the two organizations, not an agreement to which the carrier was a party. It is terminated in 1927. What construction they put on the agreement at that time, or what happened at that time, as I see it, has no bearing on this controversy here before the Court. Whatever the interpretation might have been, each craft now has a separate and distinct written agreement that has been introduced in evidence, and I don't see where it is material to go into all of the matters that may have happened prior to 1927. I object, that they have no bearing, as I see it, and could effect none of the rights of any of the parties to this matter.

The Court:

I overrule your objection originally on the information I gleaned from your paragraph 8, which used a date anterior to the abolition of the Chicago Agreement, and his questions are rather brief.

Mr. Madden:

Paragraph 8s is really setting forth the mediation agreement about which I am complaining. The mediation agreement has an exhibit to it, or has a letter of May 28, 1923, was put back into effect. I do not set that up as an agreement, I merely set that up as part of the mediation agreement about which I am complaining. The fact that the Chicago Joint Working Agreement was in effect, unless it has some other bearing upon these issues, I don't see where it is material.

The Court:

Paragraph 8 says, "Notwithstanding the matters hereinbefore set forth, and in violation of (a) said railway labor act (b) said agreement effective October 1, 1918, and subsequent changes therein, additions thereto, modifications and interpretations thereof, and the other agreements herein set forth, (c) the rights of plaintiff as sole designated representative of said craft of locomotive engineers, and (d) the rights of the members of said craft of Locomotive engineers of said Missouri-Kansas-Texas Lines, of defendant, said defendants and said firemen's committee and the said Brotherhood of Locomotive Firemen and Enginemen, through the officers of said committee and Brotherhood, by an agreement dated December 12, 1940, herein designated as 'mediation agreement', have agreed in writing concerning rules and working conditions covering said craft of engineers in their service as locomotive engineers, as follows, to-wit."

Now, his point is that there could not be any violation of any agreement in 1918, because you have an agreement covering it in force and effect up to 1927 when it was abrogated.

Mr. Madden:

Did they say 1914?

The Court:

I mean 1940; that is the only thing I can see that would entitle him to come in with this matter, which I think is obsolete. It might be of assistance to the Court, who is supposedly unfamiliar with the—not only the impedimentee—the vernacular, but the reasons for agreements of this sort to have the benefit of settlements of similar disputes before the same organizations hearing them. That is the only thing I can see that would be of any help to us. Certainly this dispute here is not apparently related to anything that happened there, and could not be guided by it in any other way, that I can discover. But, as I said, his questions are short and the answers are brief. I sustain the objection to it, from now on, to the dispute. I think you have the right to read them to me whether they are in evidence or not, in argument. You can say, here was a dispute between these same organizations before upon this same matter, and here is the way they settled it. Certainly the Court will welcome any light.

In view of the method of having your exceptions, now, if you wish to put it in the record, with what I have said, you may do so.

(By Mr. Heiss):

Q. Were there any decisions under the Chicago Joint Agreement, involving these rules?

A. There were.

Mr. Heiss:
I am simply going to make an offer of these.

The Court:
All right.

Mr. Heiss:
May we substitute copies for the originals? Is that agreed?

Mr. Madden:
Yes, sir, for the purpose of making the record.

Mr. Heiss:
Then I will make a proffer:

(Rulings under the Chicago Joint Agreement, reading as follows:)

No. 378.

September 24, 1918.

Mr. F. A. Hallet,
General Chairman, B. L. E.,

Mr. Z. J. Blake,
General Chairman, B. L. F. & E.,
Boston & Main Railroad.

Dear Sirs and Brothers:

This will aeknowledge receipt of your joint letter of September 9th., relative to the fact the B. L. E. Committee on the Boston & Main Railroad have an understanding with the Management that regular engineers, on their lay-over day, may mark up on the extra board and take

their turn in extra service, regardless of the fact that there are demoted engineers on the division, i. e., men who have a seniority date as engineers, but who have been set back firing.

Your question is:

Is this understanding in conflict with ruling 155, page 35, of the Digest of Rulings on Chicago Joint Agreement issued May 11, 1916?

In answer we will advise that this practice is in direct conflict with ruling 155, page 167 (also page 35), of the Digest of Rulings on the Chicago Joint Agreement, and you will take this as our ruling, that the practice of regular engineers taking a turn on the extra list on their lay-over day be discontinued at once, and you will have the matter handled in accordance with ruling 155, which says that, regardless of any existing rule in any schedule, that when it is necessary to call an engineer for extra work, after the extra board has been exhausted, the oldest available man should be called, regardless of whether he is a hired engineer cut off the board or a promoted engineer who has been demoted and is back firing.

I hope that you will accept this ruling and see that it is carried out in the future on the Boston & Main Railroad.

Yours fraternally,

W. S. STONE,
Grand Chief Engineer, Brotherhood of Locomotive Engineers.

TIMOTHY SHEA,
Acting President, Brotherhood of Locomotive Firemen and Enginemen.

No. 470.

May 26, 1919.

Mr. C. E. Conroe,
General Chairman, B. L. E.

Mr. C. E. Seehorn,
General Chairman, B. L. F. & E.,
Colorado & Southern Railway.

Dear Sirs and Brothers:

In handing an accumulation of correspondence involving questions affecting both organizations, we find a joint letter under date of May 10, 1917, from General Chairman Duggan, of the B. L. E., and Seehorn, of the B. L. F. & E., reading as follows:

Will you please give us a ruling on the following question:

B. of L. F. and E. Chairman takes the position that extra engineers should be run first in first out, instead of holding a chain gang, or pooled turn for any period of less than 30 days, when the regular chain gang, or pool turn engineer lays off for any period of less than 30 days, as provided in Article 26, Section 4, of the Engineers' Schedule, which reads as follows:

"When a regular freight engineer lays off for a period of 30 days or more, the senior extra engineer on the district will be entitled to his locomotive and may hold same until the regular engineer returns to work. When a regular freight engineer lays off for less than 30 days, the first extra engineer out on the board will be entitled to the locomotive and hold same until regular engineer

returns to work; except that in case when from unforeseen causes the regular engineer is off more than 30 days, the senior extra engineer in the service will be entitled to take the locomotive at the expiration of the 30 days period. In case an engineer lays off to exceed 30 days as provided above, and the senior extra engineer is already filling a similar vacancy, as is provided for, the next senior extra engineer will be entitled to the locomotive and hold same throughout the absence of the regular engineer."

In so far as this rule affects chain gang, or pooled service, for periods of less than 30 days, B. L. F. & E., Chairman takes the position that the "Chicago Joint Agreement" and rulings 79, 88 and 117 thereon cancels it, and that in order to equalize the mileage of extra engineers, they should be run first in first out, that is, dropping to the foot of the board after each trip.

B. L. E., Chairman does not understand that "Chicago Joint Agreement" or Rulings 79, 88 and 117 thereon does in any way abrogate or change Article 26, Section 4, of the Engineers' Schedule.

The point involved is covered in Joint Rulings 79, 88 and 117, Digest of Rulings.

It is our opinion, and we would so rule, that when the regular chain gang or pool turn engineer lays off for any period of less than 30 days, extra men should be run first in first out in filling such temporary vacancy.

Owning to the vast amount of work that has been imposed upon the Chief Executives in handling the various questions affecting both organizations that have arisen under Government operation of Railroads, together with the fact that each case involving interpretation of the Chicago Joint Agreement must be given personal attention by the Chief Executives, we have been unable to promptly dispose of cases of this kind that have been

referred to us, which will explain why this matter has not been handled at an earlier date.

Yours fraternally,

W. S. STONE,
Grand Chief Engineer, Brotherhood of Locomotive Engineers.

TIMOTHY SHEA,
Acting President, Brotherhood of Locomotive Firemen and Enginemen.

No. 531.

December 22, 1919.

Mr. D. E. Crayne,
General Chairman, B. L. E.

Mr. K. B. Walton,
General Chairman, B. L. F. & E.,
Atchison, Topeka & Santa Fe (Coast Lines).

Dear Sirs and Brothers:

On account of pressure of other important matters we have just found time to give consideration to your joint letter of July 2, 1919, reading as follows:

"We have been asked to submit to you for your consideration the plan by which we determine the amount of mileage made in pool and extra service when considering increasing or reducing the number of crews in their respective assignments, as some of our constituents do not share our view in this matter and would like to have your opinion as to the correctness of the computing

such mileage and counting certain mileage against the extra men and not against the pool.

Under our present rules, extra crews are entitled to handle all extra passenger service, including unassigned passenger helper work, unassigned work trains and relief work where such relief work is vacancies of less than 15 days in passenger service and for less than 30 days in freight and work first-in and first-out on all vacancies of less than 15 days but on vacancies of 15 days but less than 30 days the senior extra man who desired same is assigned.

Pool crews handled all pool freight, unassigned freight helpers, troop trains, silk trains, and engines going to or from shop or engines that are being transferred from one division to another.

In calculating the amount of pool mileage we include all mileage that belongs to pool service regardless of whether same is made by extra men or by pool men just so long as it is work that belongs to pool crews. In some cases many of the pool crews are laying off and extra crews are handling that work, taking the turn of such pool crews that are off, and rotate on such vacancies (of less than 15 days); and all mileage is counted against the pool so long as it is pool work, and the mileage made by extra crews is also counted against extra men excepting where vacancies are of 30 days or more then it is counted against the pool alone.

Under the plan as above explained, there are times when vacancies in passenger service cannot be filled from the extra list, due to company rules which required that promoted engineers must have had two years' road experience and hired men six months, and for firemen, if inexperienced, they must have six month's road experience, and if experienced men, they must have thirty days' experience on that district before they can handle passenger train, or in some instances, where extra pas-

senger trains are to be moved there are no extra men available due to lack of rest or shortage of such men, and in both cases above described it is necessary to use a pool man to protect such service. This leaves a vacancy in pool service which is filled from the extra list as soon as an extra man is available, excepting where the pool man (who was temporarily pressed into extra service due to no available or eligible extra men) returns to his home terminal before an extra man has been used in pool service in the vacancy he created, the gap is closed.

Mileage that is made by pool crews, that is classed as extra service, account of no available or eligible extra men, is not added to the pool mileage when figuring the number of crews to be assigned to pool service, unless same is work that is classed pool crews' work, and it is such mileage as belongs strictly to the extra men but was not made by them due to inexperience or shortage of extra men, that we do not count against the pool, that causes this dispute. We have ruled that it should not be considered against the pool men in regulating assignments, as a vacancy in the pool is held for the extra man where the pool man is used as above explained, and where extra men are available and have the required experience, it is work that the pool crews do not get, it is only in cases where the extra men are not available or eligible that the pool men are used; therefore, we feel that it should not be counted against the pool crews.

Will you please give us your decision as to whether this work should be counted against the pool?"

We understand that the difference upon which you ask advice is confined to the question of what mileage made by regular assigned pool men should be charged to the pool in regulating the number of crews to be assigned, under Article 11, Chicago Joint Agreement.

If we have correctly stated the point of difference, we would say that the proper method of arriving at the number of crews to be assigned to pool service is to take account of the miles or the equivalent of miles made by the turns in pool service and make adjustment accordingly.

However the specific point involved in the case cited by you is clearly covered by Ruling 177, Example 3, Digest of Rulings, reading as follows:

Example 3: District Wendover to Elko. Seven crews assigned on this district and one helper crew assigned Wendover to Shafter. Helper crew unable to make a help account tied up for rest; pool crew required to make a help. Wendover to Shafter by reason of no extra men available. Will this mileage to used in computing the average earnings for the pool crews?

Answer: Yes, under the circumstances that you name, where no extra man was available, and the work was done by one of the pool crews Had there been an extra man available, he should have been called to make the help. Paragraph (c) Article 11 makes it very plain when more men shall be added to the pool service, and this pool crew doing this work should have its earnings added to the earnings of the rest of the pool crews during the month.

The practice of permitting regularly assigned pool crews to perform service that properly belongs to the extra men is wrong and should be changed. Furthermore, it is unusual to find that a schedule rule specifying certain service to be performed by extra men is set aside by a rule or order promulgated by the Company.

Regarding the practice of using pool crews when extra list is exhausted, we would say that regardless of any rules to the contrary, when it is necessary to call an en-

ginee for extra work after the board has been exhausted, the oldest available man should be called, regardless of whether he is a hired engineer cut off the board or a promoted engineer who has been demoted and is back firing.

Fraternally yours,
W. S. STONE,
Grand Chief Engineer, Brotherhood of Locomotive Engineers.
TIMOTHY SHEA,
Acting President, Brotherhood of Locomotive Firemen and Enginemen.

No. 775.

August 24, 1921.

Mr. J. I. Whiddon,
General Chairman, B. L. E.

Mr. R. J. Tillery,
General Chairman, B. L. F. & E., Southern Railway System.

Dear Sirs and Brothers:

We have your joint submission under date of August 20, 1921, from which we quote as follows:

"We desire to submit to you for ruling the question of using demoted engineers to do emergency work as engineers; the two chairmen are unable to agree. The facts are as follows:

'A number of engineers on the First District have been cut off the engineers' extra list. They have taken position as firemen and hostlers; except men who were

hired prior to May 4, 1918, they, of course, have no rights as firemen or hostlers.

When the extra board is exhausted, and it is necessary to use a man who is cut off as an emergency, the senior man cut off, who is available and has had sufficient rest, is called. If the company fails to call the man as herein outlined a run-around trip is claimed and paid. The question we desire ruling on is whether these demoted engineers can decline to make the emergency trips when called or whether they will have to respond to the call as in any other case.' "

General Chairman Whiddon takes the position that the senior demoted engineer can decline to do emergency work as engineer, provided that there are junior demoted engineers available.

General Chairman Tillery takes the position that the senior demoted engineer available should be forced to make the emergency trip running from the fact that if he was not called that he could claim pay for run-around, and from the further fact that if the senior man is permitted to refuse the work that the junior man should be accorded the same right. He claims that by using these men to do the emergency runnings, that they are beyond question of a doubt, protecting their seniority as engineers and that the junior man should not be required to sacrifice in order to protect the senior man's rights.

Replying to above, you are referred to Ruling 508, Book 2 of Joint Rulings, Chicago Joint Agreement, which adequately covers the question you submit for ruling.

The concluding sentence of paragraph (g), Article 10, Chicago Joint Agreement, reads as follows:

No demoted engineer will be permitted to hold a run as fireman on any seniority district while a junior engi-

neer is working on the engineers' extra list or holding a regular assignment as engineer on such seniority district.

(*) Supplemental to Ruling 726.

In reply to the specific question you submit, and upon which you are in disagreement, it is our opinion, and we will so rule, that when the engineers' extra board is exhausted, and it is necessary to use a demoted engineer, the senior demoted engineer who is available for service, should be so used.

We trust you will be governed by this ruling and unite to have it made effective.

Yours fraternally,

W. B. STONE,
Grand Chief Engineer, Brotherhood of Locomotive Engineers.

W. S. CARTER,
President, Brotherhood of Locomotive Firemen and Enginemen.

No. 940.

Cleveland, Ohio, June 5, 1923.

Mr. E. O. Johnson,
General Chairman, B. L. E.

Mr. M. O. Laisure,
General Chairman, B. L. F. & E.,
Missouri, Kansas & Texas Railway.

Dear Sirs and Brothers:

This will acknowledge receipt of Brother Laisure's joint letter of March 7, enclosing copy of his letters of same date to Brother Johnson, setting forth his complaint against the use of demoted engineers to fill temporary

vacancies at McAlister, an intermediate point 100 miles north of Denison, Texas, on the Choctaw Division, and also Brother Johnson's letter of May 24, in connection therewith.

While this matter has not been jointly submitted to us as required by Article 2 of the Chicago Joint Agreement, we realize the fact that at the time Brother Laisure first directed attention to the conditions complained of, he was attending a meeting of the Standing Committee on the Chicago Joint Agreement and Amalgamation in Cleveland, and was not in a position to confer with Brother Johnson and arrange for a joint submission in which each general chairman could set forth his contentions.

The position of Brother Laisure as set out in his letter of March 7, is as follows:

It is the position of the Firemen's Committee, that where emergency engineers are used, the mileage made by them must be added to the mileage made by the engineers assigned to the engineers' extra list, when making the computation of mileage earned by extra engineers for the purpose of making regulations of the extra list. And, if the mileage made by the engineers assigned to the extra list, together with the mileage earned by emergency engineers, when added together, is sufficient to provide for the assignment of additional engineers to the extra list, without reducing the mileage earned by extra engineers below the minimum of 2,600 miles, that additional engineers, or an additional engineer should be assigned.

It is our further position that the regulation of engineers' and firemen's extra lists should be handled on the Choctaw Division in accordance with the provisions

of the Joint Working agreement, the same as on any other division of the railroad; and that sufficient engineers should be assigned to the engineers' list to take care of the work that originates for engineers, without the use of emergency engineers, so far as possible. The position of Brother Johnson as set forth in his letter is as follows:

The Choctaw Division runs from Denison, Texas, to Muskogee, Oklahoma, a distance of 161 miles via Ray with freight trains and a distance of 157 miles for passenger trains, with Denison the home terminal, and where the extra boards are maintained. McAlester, Oklahoma, is on this division, at approximately 100 miles north of Denison, which is an intermediate point so far as main line passenger and through freight service is concerned, but there is a branch line out of this place with one run assigned and there are some main line local runs which also terminal at McAlester; and, in addition to this there are two or three switch engines regularly maintained at that place. There is no extra board maintained at McAlester but all extra work that originates at that place is supposed to be taken care of by drawing on the extra board at Denison. Some of the firemen regularly assigned at McAlester are demoted engineers and there are a number of demoted firemen living at McAlester, and we have never been able to prevent the use of these demoted engineers who are now back firing as engineers on the runs out of McAlester and the use of the demoted firemen in their place as firemen, regardless of the number of engineers we may have assigned to the list at Denison. I have repeatedly done everything in my power in conference with various officials of the railroad to stop the practice of using these demoted engineers when we had engineers assigned to the list that were entitled to the

work who were not working, and in each case the officials agree to do what they can to stop the practice, but so far there has been very little, if any, change. This same condition prevails to some extent at Muskogee.

During the month of February 1923, we experimented with this condition by figuring all of the emergency miles made on the division in with the mileage made by the extra men during the first 15 days period of February and adjusted the extra engineers' board accordingly; which required the assignment of six engineers, and in fact the mileage figured in this manner provided for a little more than six men, but six men were assigned. On checking the mileage for the second 15 day period of February, it was discovered that the six engineers assigned to the list had only averaged 335 miles each in the 15 days, and each one of them had responded to every call he received, which you will see was not sufficient to make minimum mileage for one-half the men assigned.

I have always, in figuring extra engineers' mileage included all emergency mileage that the extra men could have made, and I am entirely agreeable to continuing this practice; but I am not agreeable to figuring emergency mileage that it was impossible for the extra engineers to get in with the mileage that they could make in adjusting for the boards, and I believe this is the intent and purpose of the Joint Working Agreement. Or, in other words, it is my contention that in making the joint working agreement that it was never contemplated that it would operate to prevent any man from making reasonable wage. But that the purpose of the joint working agreement was to prevent excessive mileage being made by some and little or no mileage made by others who should have been working. I am sure that a check of the mileage of all engineers in all classes of service on

any or all divisions of the M. K. & T. will show that the M. K. & T. engineers are being held down entirely within the limits of the mileage regulations provided for in the Joint Working Agreement, and as evidence of this, I am enclosing herewith copy of check of all mileage made by all engineers on the Choctaw Division in all classes of service during the entire month of February.

Brother Laisure in my opinion is attempting to go to the extreme in applying the mileage regulations of the Joint Working Agreement, for the sole purpose of making more positions for firemen; notwithstanding the fact that the youngest extra engineer on the Choctaw Division has approximately 14 years seniority as an engineer and practically all of that 14 years has been put in by these engineers on the extra board and from the outlook on the M. K. & T. today, it is likely that they will have 5 to 10 years yet in getting enough seniority to give them anything like a regular job. So you will see by this that the extra engineers job on that division, and to a great extent all over the M. K. & T. Railway, is likely to be practically a lifetime proposition with a great many of them, and, this being the fact it is of course essential that they at least make living expenses during the time they are thus assigned, as there are little or no hopes of a great many of them ever getting regular work so that they can make up for what they fell behind while on the extra board.

In reply to Brother Laisure's position that the extra engineers' list should be handled on the Choctaw Division in accordance with the Joint Working Agreement the same as any other division of the railroad; wish to state that I agree with him entirely on this and that I am not asking that the Joint Working Agreement be violated on the Choctaw Division, but, I am taking the position that the Joint Working Agreement does not

require mileage to be added to a list and used in adjusting that list when it was impossible for the men so assigned to get the mileage in question, as is the case on the Choctaw Division. I, therefore, contend that my position in this case is strictly in line with the provisions of the Joint Working Agreement and also in line with decision rendered by the Chief Executives on similar cases in the past on other railroads.

We have carefully considered the contentions as set out in each of your statements and would advise that this identical case of computing mileage made by demoted men at points away from the home terminal, has already been ruled on in several instances, as will be noted by referring to Rulings 154, Book 1; 552, Book 2 and 787, Book 4 of Joint Rulings on the Chicago Joint Agreement. Ruling 787 being based upon a similar controversy in the same territory as that covered by your submissions. These several rulings are in strict keeping with the recognized application of the Chicago Joint Agreement since its adoption, and rulings thereon handed down from time to time. This being the case, there can be no departure from established practices in this instance.

It is therefore our opinion, and we would so rule, that the practice of permitting hired engineers who are cut off the list, or demoted engineers who are back firing, to do the extra running at outlying points is dangerous, in direct conflict with the Chicago Joint Agreement, and should be stopped, as it directly defeats not only the Chicago Joint Agreement, but the purpose of the deadhead and seniority rules of the engineers' and firemens' schedules. The remedy in the case in question is for you and your committees to insist upon the company supplying men for vacancies at McAlester and Muskogee from the regular established extra list at Denison, and if this cannot be accomplished, the only alternative left is to

establish extra lists at McAlester for both organizations and insist upon the company discontinuing their practice of calling men cut off the lists. We understand from your statements that there is sufficient extra work at that point to support one or two extra engineers, and possibly a like number of firemen.

Yours fraternally,

W. S. STONE,
Grand Chief Engineer, Brotherhood of Locomotive Engineers.

D. B. ROBERTSON,
President, Brotherhood of Locomotive Firemen and Enginemen.

No. 1113.

Cleveland, Ohio, July 15, 1925.

Mr. J. E. Fisher,
General Chairman, B. L. E.

Mr. R. G. Brown,
General Chairman, B. L. F. & E.,
Kansas City, Mexico & Orient Railway.

Dear Sirs and Brothers:

We have your letter of April 27th., reading:

We have a case on this line where a demoted engineer is marked up on the laying off list as a fireman, a run he elected to take when demoted. An emergency trip running showed up and he being the senior demoted engineer available, reported to the roundhouse foreman for the trip and was used.

Question—Has he the right to take the run?

Chairman Fisher takes the position that a demoted fireman marked up on the laying off list has no right to report to foreman for emergency trip as engineer only.

Chairman Brown takes the position that any demoted fireman or hired engineer cut off the extra list has the right to insist on being used as emergency engineer, regardless of whether he has accepted a run firing or whether he is laying off a run he is holding at the time. This of course, providing he is the senior available engineer. Further, if a demoted fireman could not be used in an emergency when laying off his run, though he notified the foreman that he would protect emergency trips, just because he was laying off, then a hired engineer could not be used at all unless he held a job firing.

In our opinion, this would be in violation of the Chicago Joint Agreement as it provides that the senior engineer cut off the list must be used in emergencies when the extra list is exhausted.

Please advise so that we can handle properly in the future.

The schedules for engineers, firemen and hostlers on practically all railroads where either or both of these brotherhoods maintain committees, contain rules providing that advancement in service or assignment to preference jobs shall be based on seniority.

The books of joint rulings on the Chicago Joint Agreement contain a number of rulings to the effect that when the engineers' extra list is exhausted and there is need for an additional engineer, the senior available man, regardless of whether he is a hired engineer or a promoted engineer who had been demoted and is back firing or hostling, shall be used. (Note ruling 155, Book 1; 363, 378, 523, Book 2; 787 and 802, Book 4; and 990, Book 7 of Joint Rulings.)

The question of whether a demoted engineer who is laying off of his firing assignment is to be considered available for service as engineer, however, is not dealt with in any of these rulings.

If an emergency arose at a time when the extra engineers' list was exhausted and the only man available was a demoted engineer laying off his firing job, we are of the opinion the company would exercise its prerogative and require the demoted man, if not on sick list, to protect the work, regardless of the fact that he was laying off. If the company is privileged to exercise its option in such cases, then we are also of the opinion the employes are justified in exercising their option in somewhat similar cases.

Therefore the rulings cited would be applicable, if the employees so elected, to a case where a demoted engineer laying off his firing assignment is available for service as engineer, providing he is the senior available man, if and when the extra engineers' list becomes exhausted and there is need for an additional engineer.

Ruling: A hired engineer or demoted engineer cut off the engineers' list and holding a firing assignment has the right to insist upon being used as an engineer when the engineers' extra list is exhausted and there is need for additional engineers, even though he is laying off his firing assignment at the time the emergency arises.

Yours fraternally,

A. JOHNSTON,
Grand Chief Engineer, Brotherhood of Locomotive Engineers.

D. B. ROBERTSON,
President, Brotherhood of Locomotive Firemen and Enginemen.

(By Mr. Heiss):

Q. Will you indicate the numbers of the rulings under the Chicago Joint Agreement which ruled on the rules in question?

A. Chicago Joint Agreement, Rule No. 378, 470, 531, 775, 940, 1,113; there were others, but I only selected these six.

Q. Did I ask whether the provisions of the Chicago Joint Agreement are substantially—a substantial number of them, were incorporated under two schedules of the Katy line.

A. They were incorporated under the original agreement and the fireman's agreement on the MK&T Railroad.

Q. Are they still there?

A. They are. The agreements of October, 1918.

Q. And to the termination of the Chicago Joint Agreement, was any effort made between the two brotherhoods to reach another agreement?

A. There was within a year after the Brotherhood of Locomotive Engineers abrogated the Chicago Joint Agreement.

Q. Tell me briefly what happened?

Mr. Madden:

I don't see where efforts to agree, when they did not agree, how that could be material.

The Court:

What is the purpose of it?

Mr. Heiss:

The allegations of the answer of the railroad are to the effect that they believed it to be a matter of agreement. We are trying to show in response to that a suggestion on their part, that we have made every conceiv-

able effort to agree in a tri-party agreement. In any event, that finishes my questions about the Chicago Joint Agreement.

(Question read by the reporter.)

A. Committees of the Brotherhood of Locomotive Engineers, and the Brotherhood of Locomotive Firemen and Enginemen, conferred over a period of time, a couple or three weeks, and reached a tentative agreement, acceptable to the committee of both organizations. The Brotherhood of Locomotive Firemen and Enginemen's authority to ratify that agreement took the favorable action and did ratify it. The committee representing the Brotherhood of Locomotive Engineers was composed of its officers, general officers. They unanimously agreed to the tentative agreement, and when it was submitted to their general chairman for ratification, the general chairman declined to ratify it, and appointed a committee of their own, to undertake to negotiate further. That was in 1928. At the solicitation of the National Mediation Board, either 1930—

Mr. Madden:
I don't think that is responsive.

Mr. Heiss:
We will abandon that course of inquiry.

(By Mr. Heiss):
Q. Now, Mr. Goff, I want you to turn to item 1 of the mediation agreement, will you explain how that item works in practical operation?

The Court:
Is that item 1?

Mr. Heiss:
Yes.

A. Item 1 of the mediation agreement of December 12, 1940, in practical operation it simply means that if there is a requirement for a service of an engineer, and no extra engineer is available, the oldest demoted man working as a fireman will be called to fill that vacancy. Calling the oldest man, he may be at the point where the vacancy occurs, or he may not be, it depends on the availability of the older man.

Q. Will you point out the difference in actual operation between item 1 of the Mediation Agreement and the letter agreement between the B of L and the carrier of December 14, 1938?

A. As I stated, under the item 1 of the Mediation Agreement, there is a vacancy with no extra engineer available. The railroad would call the oldest available demoted man. Whereas, under the letter agreement of 1929, the railroad would have called the oldest available demoted man whose home terminal was at the point where his services were required.

Q. Did you say 1929 and mean 1938, there?

A. I said 1929, I was confused in the dates. The so-called Smithville agreement is 1929 and the other agreement to which I have reference here is 1938.

Q. Have you finished your answer to that question?

A. Yes.

Q. Is the right of the senior available engineer, who is firing, to be called for such service, recognized by any rule in the firemen's schedule?

A. It is.

Q. Will you point out those rules?

A. Article 58 of the firemen's agreement of October 1, 1918, paragraph G, provides that no demoted engineer will be permitted to hold a run as fireman on any sen-

iority district while a junior engineer is working on the engineer's extra list, or holding a regular assignment as engineer on such district.

Q. Just refer to the sections and I will ask you another question.

A. All right.

Q. Article 49 of the agreement of October 1, 1918, Paragraph G.

Mr. Madden:

Might I interrupt? He referred to Rule 58, a new article. Are they the same, or different numbering?

Mr. Heiss:

He means article?

A. I said, I think, article in both instances.

(By Mr. Heiss):

Q. Will you explain in what respect those rules sustained the right of the senior demoted engineer to be called?

Mr. Madden:

I believe that calls for a legal conclusion as to how it is sustained. He can state how it operates.

Mr. Heiss:

Well, explain how it operates, how those rules operate?

A. They operate on this railroad, as well as practically all railroads in the United States and Canada, by simply recognizing the senior rights of the men who are in firing service, and who have qualified for a service as locomotive engineers. That is, the right to be promoted, they are required to take promotion, and when

there is service for an engineer, whether regular service or temporary service, or emergency service, the oldest available man is entitled to be called for that work.

Q. Can you tell what condition brought about the negotiations or seniority rules, providing for the promotion of firemen and engineers?

A. The discrimination that railroad officials in years gone by when they would select men of their own choice, regardless of qualifications, authorized to make promotions, would select such firemen as he chose to promote, although it would not be the senior man, in all cases, in many cases would not be. That led to negotiations by the Brotherhood of Locomotive Firemen and Enginemen, with the adoption, generally, throughout the country, of rules requiring the promotion of firemen in the order of their seniority provided they could qualify. The first of those agreements was on the Western Railroads, including Texas and Kansas.

Q. Was it the object, when seniority arose, that when a job of engineer opened up, when there was no junior engineer ready to take the job, that the oldest fireman in point of seniority would get the job?

A. Yes, sir, he not only had the right to claim the job, but he was required to take it.

Q. Turn to item 3 of the mediation agreement. That represents a pool board at Smithville?

A. It does.

Q. What condition did you find existing there when you started to handle this case?

A. I found evidence that when the pool engineers at Smithville resumed, according to the agreement, working first in and first out, the engineer who was first out for any reason was not going out in his turn, the second man, the one who followed him into the Smithville terminal, would be moved up to go out on the run that the No. 1 pool man would have taken out, had he not been off duty.

Q. What condition existed there prior to 1929?

A. Prior to 1929, if the first pool engineer due to be called out of Smithville was not going out on his run and no extra man was available to take his place on that run, the oldest available demoted engineer was called from the firing service to take that run out; not only called for it, but required to take it.

Q. Do you have in mind the letter agreement pleaded in the amended complaint of May 14, 1929, referring to Smithville? I hand you a copy of amended complaint on page 4. Will you explain to the Court what effect that agreement and its application had upon the firemen?

A. Had the effect upon firemen, first, of denying to the oldest demoted available man who was working as a fireman, the right to perform services as an engineer, and likewise, denied to other firemen, particularly those on the firemen's extra list, the right to perform services as firemen to fill the vacancy which this demoted man, working as a fireman would have created, had he been out as an engineer.

Q. What was the effect of the engineers?

A. None whatever, as far as I can see.

Q. What was the effect upon engineers in the pool?

A. It would have the effect on engineers in the pool, that those assigned to that service would have an opportunity of making a few more miles in a month's time.

Q. That is, there is a certain amount of work available; I take it there is only a limited amount of work available in a pool, is that right?

A. At Smithville, some ten or twelve pool engineers are assigned, but they are regulated so as to keep it between an average of thirty-two hundred miles and thirty-eight hundred miles per month.

Q. If one drops out, according to this letter agreement of May 14, 1939, the work is done by whatever engineers are remaining, is that right?

A. In that pool, yes, sir.

Q. This had the effect of foreclosing firemen from getting any of that work?

A. Yes, sir, it does.

Q. What is the comparative value of that kind of work with the firemen, as compared to his firing job?

A. It is a higher rate of pay for the services performed, and the time devoted to the service, and incidentally, a higher grade of service, to which all firemen aspire.

Q. Is that right of the senior available demoted engineer you contend to be called for work in the Smithville pool recognized by any rules in the firemen's schedule?

A. Yes, sir.

Q. What are they?

A. The same rules are designated as having application to the situation in Rider 1.

Q. In explaining that answer; would the same explanation be as you gave before, in respect to the application of seniority rules relative to item 1?

A. It would.

Q. Now, at Smithville, is that a yard?

A. Yes, sir, there is a yard at Smithville.

Q. Are there yard engines working?

A. Yes, sir, some of them.

Q. I assume a yard engineer runs the yard engines?

A. They do.

Q. In the event that there is a vacancy on a yard engine, who is called to fill that vacancy?

A. An extra engineer, if one is available.

Q. If he is not available, who is called?

A. The oldest demoted man working as a fireman.

Q. He is then working as a fireman, is that right?

A. That is right.

Q. Do you know what the agreement provides for the average yard pay for yard engineers?

A. Approximately $8.00 per day of eight hours. I think at Smithville, it would be about $8.49, although it might average less than that, because of the different sizes of locomotives.

Q. This senior demoted engineer who was working as a fireman, what kind of a job does he usually hold?

A. Ordinarily he would have preference for the most desirable jobs on his seniority district. Generally, the older men take the better pay jobs, such as passenger runs, runs that do not keep them away from home a great period of time, if there are such runs. Those who do not have sufficient seniority to be entitled to passenger runs, will take the freight jobs.

Q. Take the typical passenger run at Smithville, what kind of a run would that be?

A. From Smithville to Galveston?

Q. How far is that?

A. 167 miles.

Q. And the senior demoted engineer who is working as a fireman at that time could take that run?

A. Yes.

Q. And does that run run from Smithville to Galveston and return?

A. Yes, sir, he will go down one day and back the next, has to lay over at Galveston.

Q. How much would a fireman get for that service?

A. Eighteen or twenty dollars. He gets 324 miles and gets 324 times the rate per mile, which I think on the engines used on that service is 5.62 per mile.

Q. Is it true or not, that he loses the opportunity on that passenger run, if he is called for work on a yard engine?

A. Many, many times he would, yes, sir.

Q. Does the engineer's agreement which they made at Smithville, permit that senior man who is working as a fireman to take a job in the pool?

A. No, sir, not in the pool, in the letter agreement of 1929.

Q. Now, turn to No. 2, of the mediation agreement; when was the original understanding entered into, as far as this case is concerned, with reference to the handling of the working list?

A. March, 1923.

Q. And is that evidenced by the letter of that date, quoted in the amended complaint?

A. It is dated March 28, 1923.

Q. Who were the parties to that agreement?

A. Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, order of Railway Conductors, order of Locomotive Trainmen, Missouri-Kansas & Texas Railway system.

Q. Was that agreement ever canceled by anybody, to your knowledge?

A. Not to my knowledge.

Q. Tell me what happened with respect to the handling of the lists after March, 1923?

A. After March, 1923, lists were handled by designated officers of the railroad company, but in accordance with a manner in which committees of the Brotherhood of Locomotive Engineers, Locomotive firemen and enginemen had generally handled the list prior to that time, and in accordance with the interpretation and rulings made upon those rules applicable to the lists.

Q. Mr. Johnson this morning used a phrase that the railroad had, sometime prior to 1940, drifted away from applying that agreement, is that true?

A. I think perhaps the Brotherhood of Locomotive Engineers drifted into some other practice, rather than the railroad drifting away from it.

Q. On December 12, 1940, item 2 of the mediation agreement, relates to that situation of handling lists?

A. Yes, sir.

Q. What effect did it have?

A. Restored the method of adjusting lists followed under the March 28, 1923 letter agreement, which continued in effect for a period of twelve or fourteen years, following the effective date of that letter agreement.

Q. You say it continued in effect, I thought you testified before that the agreement was never canceled?

A. Well, I did.

Q. Distinguish between application and effect, I think that is what you mean?

A. That is right. These applied from the effective date, 1923, until they drifted away for some reason. Item 2 of the mediation settlement simply restored that method of adjusting the list.

Q. Your testimony is that agreement has always been in effect?

A. Absolutely, yes, sir.

Mr. Heiss:

I have no more questions at this time.

The Court:

Is there any further cross examination?

Cross Examination.

By Mr. Weisell:

Q. I think you stated that under that practice at Smithville, under the rule of 1929, when the oldest demoted engineer moved up to take the extra work there, that he received the pay of an engineer, or better pay than he was making as a fireman, a better class of work, and so forth, is that correct?

A. No, it is not correct, as to pay. What I said was that the rate was higher for the time devoted to the service. He gets a higher hourly rate, his earnings will be less in many instances.

Q. It is true, is it not, that to the extent of the earnings, which he might make, if he was called for the service, would deprive an engineer of the extra board of the earnings?

A. No, he would be called, if there was an engineer on the extra board.

Q. You don't understand me. If there is no extra man available at the time the run was called, then the pool man was moved up to the vacancy, was he not?

A. That is right.

Q. But when an extra man was available to take the turn, or vacancy that then existed in the pool, that is correct, isn't it?

A. That is right.

Q. Now, when an emergency man is called for service, when no extra man is available, the extra man does not move into the turn that was made available?

A. Not the extra man assigned to the working list, no, he would not.

Q. So that extra man who would have been placed in the vacancy when it occurred, does not get placed in the vacancy when the work has been performed by an emergency man?

A. For the reason he is not available.

Q. And to that extent, then, he would not get in the period for which the earnings are checked, the earnings made by the emergency man?

A. That is right.

Q. Now, you stated, I think, referred to a rule in the firemen's schedule, which you said covered the calling of emergency men for such service, the oldest available man. What rule was that again? Will you give me the reference to it, please?

A. Article 49, paragraph G.

Q. Well, does that say anything about emergency men, or does that refer to putting men on the extra board?

A. That refers to moving demoted men from firing service to engineering service, regardless of whether it is an emergency or a regular assignment as extra.

Q. There is nothing in it that said anything about emergency men?

A. No, but it does not exclude him.

Q. Or calling the oldest demoted engineer?

A. It provides that the men who get off of the engineering service and return to firing service, will be required to go back into engineering service when necessary, in order to protect the service.

Q. It does not deal with the method of bringing them back into service, does it?

A. Yes.

Q. In what respect?

A. Provides when it is necessary to increase the number of engineers.

Q. That means the number on the board, doesn't it?

A. Not necessarily, it means the number of working people.

Q. Now, with reference to the calling of road men, with reference to calling of men to perform yard service under that rule, when it was in effect at Smithville; questions were asked this morning about calling the oldest demoted man for yard service. Is it not a fact that road men are not available for yard service at that point?

A. I can't make the definite statement, I don't think they are.

Q. That is the usual situation?

A. I mean by that, they would not call the demoted man if there was an extra man there.

Q. If there was an extra man; but I mean the men in the pool, road men, they are not called for yard service, are they?

A. No.

Q. Again referring to that Smithville situation, when the pool of 1929 was in effect, setting up of the pool men, to the vacancies which exist, did not increase the mileage of the men in the pool, did it?

A. Yes, sir, it increased the mileage of the individual engineer, because there was a lesser number performing service.

Q. Well, if it—

A. In other words, they would earn more miles per month.

Q. They might earn more miles per month than if an emergency man had been called for?

A. That is right.

Q. And if an emergency man is called for, it decreased the miles?

A. No, it left them where they would have been if an extra man would have been called.

Q. There are only so many miles, and if part of them are performed by the emergency man, how did the man in the extra board in the pool get that many miles?

A. The explanation would be this: You have ten engineers in the pool, the man who stands to go out first, for some reason does not go. The other nine men would perform the work that ten men would perform if he was in the service. That thereby increases the earnings for the nine men. Now, if the emergency man or extra man was used to fill the vacancy when the pool engineer No. 1 did not go out, then the mileage of all of the pool men left in the pool would be the same as if the pool men had not laid off, so they do not lose anything. It deprives them of the opportunity to gain a few miles.

Q. Isn't it a fact that if in a course of time there are fifty thousand miles available in the pool, and that those miles would all be run by the men in the pool, if they were called under the Smithville rule as it was

in effect, they would all get the fifty thousand miles, however many men there are in the pool?

A. That is right.

Q. And if an emergency man were called in to perform some of the service then wouldn't the men in the pool have their mileage decreased to the extent that the service was performed by the emergency man?

A. No, sir, I don't agree that it would be decreased, it would be a prohibition against increasing it.

Q. If the emergency man--supposed to make it concrete—fifty thousand miles in the pool for the period, if the emergency man come in and performed five thousand miles of that service, how many miles are left for the pool men?

A. Forty-five.

Q. Then it is decreased five thousand miles by the pool man?

A. In case the man assigned to the pool should make that forty-five thousand miles, they would make the same miles they would have if there had been no emergency men in the pool and the regular man in the pool had not laid off.

Q. Are you taking into account the extra man in making that statement?

A. Oh, yes.

Q. I would like to pursue that a little further.

The Court:

It is very simple. You have ten men, and ten men make five thousand miles, and if one of them lays off, he doesn't get his part of that fifty thousand miles, and they put another man in his place, and the nine men, plus the man put in his place makes the same fifty thousand miles. That is the situation. You can figure it yourself.

Mr. Weisell:

Might I ask one more question? The total number of miles which is run is then divided between the men on the pool and the extra board on one side, and the emergency men on the other side, instead of being divided among the men in the pool, is it not?

A. That is right.

Third Party Defendant rests.

Mr. Heiss:

I have forgotten whether I offered the Third Party Defendant's Exhibit in evidence or not, if I have not, I offer all of them.

The Court:

I think you offered them as you went along. You might have overlooked some.

Mr. Weisell:

I would like to recall Mr. Goff for a question or two.

The Court:

All right.

352 CARL J. GOFF, recalled for further examination by Mr. Weisell, testified as follows:

Q. Going back to the illustration we were using, I think I used the term, "Pool men." Now, under the system in Smithville, when the pool men were set up, and the extra men came in to take the vacancy, then altogether they made the same mileage that the pool and the extra board did, didn't they, it was kept within the pool and the extra board?

A. That is right.

Q. And the extra men did not lose any mileage by reason of not being present when the vacancy occurred, is that correct?

A. I think so, yes, sir.

Q. And if an emergency man is called for that service to fill the vacancy, when no extra man is available, the extra man does lose that mileage, does he?

A. No.

Q. And the emergency man gets it?

A. The emergency man gets the miles but the extra man does not lose anything, he is not there.

Q. He does not come into the vacancy as he would be if the pool man had been set up, isn't that correct?

A. I think he would be.

Q. Isn't it a fact that at Smithville, he was not cut into the vacancy when he came in?

A. I can't say definitely on that, I don't know.

Q. You don't know?

A. I can't say definitely on that.

Mr. Madden:

Plaintiff closes.

Mr. Wight:

Defendant closes.

Mr. Heiss:

Third Party Defendant closes

355 CLERK'S CERTIFICATE.

I, GEO. W. PARKER, Clerk of the United States District Court for the Northern District of Texas, do hereby certify that the foregoing is a true and correct transcript of the record, and all proceedings in Cause No. 449-Civil, wherein, General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad, an Unincorporated Association, is Plaintiff, and Missouri-Kansas-Texas Railroad Company, a Corporation, and Missouri-Kansas-Texas Railroad Company of Texas, a Corporation, are Defendants, and General Grievance Committee of the Brotherhood of Locomotive Fireman and Enginemen, are Third-Party Defendant, as fully as the same now remain on file and of record in my office at Dallas, Texas.

Witness my hand officially and the seal of said Court at Dallas, Texas, this the 20th day of October, A. D. 1941.

GEO. W. PARKER,
(Seal) Clerk, U. S. District Court,
Northern District of Texas,
at Dallas.
By MARY CONGER,
Deputy.

[fol. 295] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:—

ARGUMENT AND SUBMISSION

Extract from the Minutes of November 6, 1942

No. 10115

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE MISSOURI-KANSAS-TEXAS RAILROAD

versus

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, ET AL.

On this day this cause was called, and, after argument by J. W. Madden, Jr., Esq., and Clarence E. Weisell, Esq., for appellant, and Allen Wight, Esq., and Harold C. Heiss, Esq., for appellees, was submitted to the Court.

[fol. 296] OPINION OF THE COURT—Filed December 9, 1942

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 10115

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE MISSOURI-KANSAS-TEXAS RAILROAD, Appellant,

versus

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, ET AL., Appellees

Appeal from the District Court of the United States for the Northern District of Texas

(December 9, 1942)

Before Sibley and Hutcheson, Circuit Judges, and Dawkins, District Judge

SIBLEY, Circuit Judge:

The appellant, General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-

Kansas-Texas Railroad, who will be referred to as the Engineers' Committee, is a body of men each of whom is chosen by a lodge of the Brotherhood of Locomotive Engi- [fol. 297] neers on the named railroad to represent them in collective bargaining and the handling of grievances with the said railroad, and the Committee has for many years been the duly designated bargaining representative for the craft of engineers on that railroad. The Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen, hereafter referred to as the Firemen's Committee, is a similar body set up by the lodges of the Brotherhood of Locomotive Firemen and Enginemen on said railroad, and has for many years been the duly designated representative for collective bargaining of the craft of firemen on that railroad. As the background of this controversy, the record shows that since 1918 the craft of engineers and the craft of firemen each has had a formal agreement concerning rules, rates of pay, and working condition- with such railroad, which have severally been modified in some particulars by later agreements and interpretations. These formal agreements were made while what is known as the Chicago Joint Agreement between the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen was in effect. This joint agreement between the two unions, made in 1913, undertook to regulate relationships between themselves, including the transfer of firemen to engineer's work, and vice-versa, and contained provision for compulsory and final settlement of any disputes between the two unions. This joint agreement was cancelled by the Brotherhood of Locomotive Engineers in 1927, and there is now no union machinery for ending such a dispute between engineer's and firemen's crafts as exists here.

The dispute relates to the rules that shall apply in calling firemen, or engineers who have been demoted to firing, to take emergency runs as engineers, or to fill a vacancy in what is called a "pool" of engineers. The engineer's agreement of 1918, (Art. 38), asserted that the right to make and [fol. 298] interpret contracts, rules, rates and working agreements for locomotive engineers shall be vested in the regularly constituted committees of the Brotherhood of Locomotive Engineers. The firemen's agreement (Art. 44) similarly asserted a like right as to firemen and hostlers in

the Committees of the Brotherhood of Locomotive Firemen and Enginemen. Yet both agreements contain rules for the demotion of engineers to be firemen, and the promotion of firemen to be engineers, and for their return to their former work. The rules in the two agreements are consistent, indeed substantially identical. Certain interpretations or agreements, favored by the engineers, relative to calling firemen for emergency service as engineers were made in the course of years, which caused dissatisfaction to the firemen. They complained to the railroad, which at first took the position that the matter was for negotiation only with the engineers' representative, but the firemen threatened to strike, and the Mediation Board was called in under the provisions of the Railway Labor Act. 45 U. S. C. A. § 155. It invited the Engineers' Committee to enter the negotiation, but that Committee refused. An agreement was negotiated under the auspices of the Mediation Board, which was satisfactory to the firemen but not to the engineers. The railroad thereupon, under the procedure prescribed in 45 U. S. C. A. § 156, cancelled its previous contrary interpretations or agreements with the Engineers' Committee. The Engineer's Committee then filed in the district court this petition, as one arising under the Railway Labor Act, 45 U. S. C. A. § 151 and ff, in which it claimed for itself, as the bargaining representative of the engineers, the exclusive right to bargain with the railroad on the subject matter in dispute, and that its right has been denied by making the mediated agreement with the Firemen's Committee which therefore is void; and there being a present definite controversy thereabout, a declaration to the just stated effect is prayed. The Firemen's Committee was [fol. 299] made a party, and it defended the mediation agreement and prayed for a declaration that it was valid and binding on all parties to this cause, subject to a contention that the Court was without jurisdiction of the subject matter. The Railroad prayed a declaration of the rights of all parties, for their guidance.

There is an acute controversy over a rule of service on the railroad which may have daily application. The questions raised are to be determined by the Railway Labor Act, a law of the United States, which is also a law relating to commerce. Jurisdiction therefore exists under 28 U. S. C. A. § 41 (8); and the remedy by declaratory judgment is

applicable and appropriate; 28 U. S. C. A. § 400. The prohibitions touching injunctions in labor disputes do not apply, for no injunction is sought. No one is objecting to the two Committee's appearing as entities, instead of by the names of the persons composing them. We will raise no point about it. See Rule 17, Rules of Civil Procedure; *United Mine Workers of America vs. Coronado Coal Co.*, 259 U. S. 344; *Brown vs. United States*, 276 U. S. 134.

As has been stated, the original collective agreements of 1918 affirm a sole right of the Engineers' Committee to represent the engineers, and of the Firemen's Committee to represent the firemen. The Railway Labor Act, 45 U. S. C. A. § 152, Fourth, gives the right to a representative chosen by the majority of a craft or class to represent the whole, whether all are members of a union or not. The right of a representative so chosen is exclusive as against anyone else seeking to represent that craft or any part of it. *Virginian Railway Co. vs. System Federation No. 40*, 300 U. S. 515. A dispute as to who shall vote in the selection is to be settled under Section 152, Ninth. No such dispute exists here. The disputes contemplated by the Act as to be settled or prevented by collective agreement are [fol. 300] described generally in Sect. 151 (a)(4) and Sect. 152, First, as those relating to rates of pay, rules, and working conditions. The present dispute is over a rule for calling firemen to emergency work as engineers. The settlement made, under mediation, with the representative of the craft of firemen was not participated in by the representative of the engineers, and the dispute remains unsettled, practically, as to the latter. The Engineers' Committee contends that the disputed rule relates only to engineers, and is within its exclusive authority to make an agreement. The Firemen's Committee contends that the firemen are at least equally affected, and that it has a right to agree for the firemen even though the engineers refuse to participate. The District Court, hearing the case without a jury, held with the firemen's contention.

The Railway Labor Act does not undertake to say what matters shall be considered the business of each particular craft. It does not define the crafts or classes of employees, and forbids any effect to be given classifications made for other purposes by the Interstate Commerce Commission; Section 151, Fifth. It does, however, say this:

Sect. 152, Second: "All disputes between a carrier or carriers and its or their employees shall be considered, and if possible decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof *interested in the dispute.*" The statute thus recognizes, what is the practical truth, that no conference or agreement will end a dispute unless all who are really interested are represented. The most bitter and perhaps the most numerous industrial disputes have come to be those in which classes of employees dispute with their employer and one another over who has the right to control a particular matter; the so-called jurisdictional disputes. Regardless of who may be right or wrong, such a dispute [fol. 301] can be settled justly only by a tri-partite agreement. This is true of the present dispute.

We need not enter into the details of the contested rule, which are a little complicated. It is clear that any rule which provides for the promotion or demotion from service as an engineer concerns engineers. It is equally clear that when the promotion involves the taking of a fireman from his craft to become an engineer, or the demotion makes the engineer to become a fireman with a superior seniority that may affect the seniority of all other firemen, the craft of firemen is concerned. Both crafts are interested in a rule for transfer of men from one to the other. This was recognized in the two original agreements of this railroad with its engineers and firemen, and consistent provisions are put into each. That consistency ought to be preserved in any further conference or agreement on the subject under the Act. The Mediation Board sought to bring in the Engineers' Committee. When that Committee refused to cooperate, the Board, perhaps thinking the Engineers' Committee might acquiesce or later agree, went ahead and proceeded to mediate an agreement with the Firemen's Committee alone. We cannot say the agreement thus reached violated any law and is void, but it is incomplete. The engineers are not bound by it, and the carrier is not protected against the discontent of the engineers, and the peace of transportation is not secured. The contending parties would now perhaps most wisely seek a new negotiation participated in by all. If no agreement can be had, the carrier will be left free to revoke all agreements on this subject

as provided by the Act, Sect. 156, and may make its own rules.

We therefore think the Engineers' Committee is wrong in claiming that it has the exclusive right to confer and agree about the rule in contention, and in claiming that the agreement made with the Firemen is illegal as infringing [fol. 302] an exclusive right. We think the Firemen's Committee is wrong in the contention that its agreement establishes a rule for the engineers, or is perfect or complete. The petition, because of the cross-prayers, ought not to be dismissed, but the rights of the parties ought to be declared. We enter the declaratory decree which we think should have been entered as follows:

It is decreed and declared:

1. That the appellant Committee as the representative of the engineers has not the exclusive right under the Railway Labor Act to confer and agree about the rules for transferring employees from the craft of firemen to the craft of engineers, or vice versa; but the matter being the concern of both crafts, the representatives of both crafts are by the Act directed to confer and if possible agree.

2. The mediated agreement with the Firemen's Committee is not illegal and void, but it is incomplete as not binding the craft of engineers, and if not acquiesced in by the engineers, the employer can terminate it under the Act.

Let the costs of appeal be paid one-half by appellant and one-half by appellees. The costs of the District Court stand as fixed by that court.

Modified and Affirmed.

[fol. 303] JUDGMENT

Extract from the Minutes of December 9, 1942

No. 10115

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE MISSOURI-KANSAS-TEXAS RAILROAD

versus

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, et al.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Texas, and was argued by counsel;

On consideration whereof, It is now here decreed and declared:

1. That the appellant Committee as the representative of the engineers has not the exclusive right under the Railway Labor Act to confer and agree about the rules for transferring employees from the craft of firemen to the craft of engineers, or vice versa; but the matter being the concern of both crafts, the representatives of both crafts, are by the Act directed to confer and if possible agree.

2. The mediated agreement with the Firemen's Committee is not illegal and void, but it is incomplete as not binding the craft of engineers, and if not acquiesced in by the engineers, the employer can terminate it under the Act.

It is further ordered, adjudged and decreed that the decree of the said District Court in this cause as so modified be, and the same is hereby, affirmed. Costs of appeal to be paid one-half by appellant and one-half by appellees. The costs of the District Court stand as fixed by that Court;

[fol. 304] It is further ordered, adjudged and decreed that the appellant, General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad, and the surety on the appeal bond herein, National Surety Corporation, be condemned, in solido, to pay one-half of the costs of this cause in this Court, and that the appellees, Missouri-Kansas-Texas Railroad Company, and others, be condemned, in solido, to pay one-half of the costs of this cause in this Court—for all of which execution may be issued out of the said District Court.

[fol. 307] ORDER DENYING REHEARING

Extract from the Minutes of January 21, 1943

No. 10115

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE MISSOURI-KANSAS-TEXAS RAILROAD

versus

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, et al.

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

[fol. 308] CLERK'S CERTIFICATE

UNITED STATES OF AMERICA,

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 295 to 307 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 10115, wherein General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad, is appellant, and Missouri-Kansas-Texas Railroad Company, et al., are appellees, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 294 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 17th day of February, A. D. 1943.

Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals, Fifth Circuit. (Seal.)

[fol. 309] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 24, 1943

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted. Counsel are requested to discuss in their briefs and on oral argument the following questions, so far as applicable in each case:

(1) whether resort to the declaratory judgment procedure is appropriate in the circumstances;

(2) whether any questions of the construction of the contracts involved are governed by state or by federal law;

(3) what bearing, if any, the Norris-La Guardia Act has on the propriety of granting the relief sought;

(4) in No. 937, whether the district court had jurisdiction to review the certification of the Board.

The Solicitor General is requested to file a brief *amicus curiae*, and if he so desires to participate in the oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

In the Supreme Court of the United States

No. 796

OCTOBER TERM, 1942.

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE MISSOURI-KANSAS-TEXAS RAILROAD, an unincorporated association,

Petitioner,

v.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, a corporation, MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS, a corporation, and GENERAL GRIEVANCE COMMITTEE OF THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, an unincorporated association,

Respondents.

PETITION FOR A WRIT OF CERTIORARI
To the United States Circuit Court of Appeals for the Fifth Circuit and
BRIEF IN SUPPORT THEREOF.

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THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—MAIN 5647

In the Supreme Court of the United States

No. .....

OCTOBER TERM, 1942.

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE MISSOURI-KANSAS-TEXAS RAILROAD, an unincorporated association,

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In the Supreme Court of the United States

No. .....

OCTOBER TERM, 1942.

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE MISSOURI-KANSAS-TEXAS RAILROAD, an unincorporated association,

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v.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, a corporation, MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS, a corporation, and GENERAL GRIEVANCE COMMITTEE OF THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, an unincorporated association,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

May it Please the Court:

General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad, petitioner, prays that a writ of certiorari issue to review the judgment and decree of the United States Circuit Court of Appeals for the Fifth Circuit entered in the above entitled cause, numbered therein No. 10115, modifying and affirming the declaratory decree and judgment of dismissal of the United States District Court for the Northern District of Texas, Dallas Division (R. 68).

OPINIONS BELOW.

The opinion of the Circuit Court of Appeals for the Fifth Circuit (R. 296-302) is reported in 132 F. 2d 91. The findings of fact and conclusions of law and the opinion of the District Court are not reported but are found in the record (R. 70-78).

JURISDICTION.

The opinion and declaratory judgment or decree of the Circuit Court of Appeals were entered on December 9, 1942 (R. 303). Petitioner's petition for rehearing was denied January 21, 1943 (R. 307). The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925 (28 U. S. C. §347).

STATEMENT.

The parties will sometimes be referred to hereinafter as follows: the petitioner, General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad, as the "representative of the engineers' craft" or "Engineers' Committee"; the respondents, Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, as the "carrier," and the respondent, General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen, as the "representative of the firemen's craft" or "Firemen's Committee."

Petitioner Engineers' Committee is, and for more than forty years has been, the designated representative of the craft of locomotive engineers on the carrier's lines of railroad (R. 21, 22, 95), the carrier being one subject to the Railway Labor Act (R. 21, 40). On December 12, 1940, as a result of collective bargaining, the carrier, without joinder or consent of the Engineers' Committee, entered into a so-called Mediation Agreement with the representa-

tive of the firemen's craft (R. 27-32), which Mediation Agreement contained three rules pertaining to the entry into the engineers' craft and to services to be performed by members of that craft, the result of which changed existing agreements of long standing between the carrier and the Engineers' Committee and an existing practice under a tacit or implied understanding between the carrier and the Engineers' Committee (R. 27, 29-32, 108, 116-121, 126-128, 141, 158-159, 168-169).

Whereas one rule, as theretofore agreed upon by the carrier and the Engineers' Committee, had required the use as an emergency engineer of the senior available demoted engineer[1] whose home terminal was at the point where the service was required (R. 108, 116-118), Item 1 of the Mediation Agreement removed the limitation with respect to the terminal and required the use of the senior available demoted engineer without reference to the location of his home terminal (R. 27).

Whereas a second rule, as agreed upon between the carrier and the Engineers' Committee, had provided for the regulation of the working lists of engineers[2] by the railroad and the Engineers' Committee, and the practice of having the lists regulated by said Committee alone had become definitely established thereunder (R. 158-9, 168-169, 108, 126-128), Item 2 of the Mediation Agreement, as interpreted and applied by the carrier, required that the regulation of the engineers' lists be handled by the carrier, the

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[1] A demoted engineer is one demoted from the working lists of engineers and, in most cases, working as a fireman.

[2] The working lists of engineers are lists of the men who are to be employed regularly as engineers for a given period. The regulation of such lists includes the regulation of the number of men on such lists, and the adding of men thereto or removing them therefrom, as the amount of work fluctuates. Men added, in most cases, come from the firemen's working lists, and, when removed, may return to the firemen's working lists. (R. 96, 102-103, 214, 218-219.)

Engineers' Committee and the Firemen's Committee (R. 27, 29-31, 148-149).

Whereas a third rule, as agreed upon between the carrier and the Engineers' Committee, had required that, in case of a vacancy in the engineers' "pool"[3] at Smithville, Texas, when the engineers' extra board[4] was exhausted, the vacancy should be filled by "setting up" or assigning the next pool engineer (R. 108, 119-121), Item 3 of the Mediation Agreement required such vacancy to be filled by calling the senior available demoted engineer, regardless of where he was located in the seniority district, and without reference to whether he was located at the terminal where the service was to be performed (R. 27-28, 31-32).

On December 19, 1940, the carrier gave notice that it would cancel the said existing agreements which had been entered into with the Engineers' Committee covering the subjects contained in Items 1 and 3 of the Mediation Agreement of December 12, 1940 (R. 108, 128-131). Following such notices conferences were held between the Engineers' Committee and the carrier, but no agreement was reached (R. 161). Petitioner then invoked the aid of the Mediation Board, but mediation failed (R. 161). On March 24, 1941, the carrier again gave notice, under Section 2, Sixth, of the Railway Labor Act, that the agreements with petitioner would be cancelled as of April 13, 1941 (R. 108, 137-138), and they were so cancelled by the carrier on such date (R. 161). Notice was not given of any change in the existing practice covered by Item 2 of the Mediation Agreement, but the carrier changed the practice by requiring concurrence of the firemen's representative in the regulation of the engineers' working lists (R. 149).

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[3] The engineers' pool is a list of engineers working "first in, first out," in a particular class of service.

[4] The engineers' extra board is a list of extra engineers from which vacancies in assigned or pool service are filled.

Petitioner then instituted this action seeking a declaratory decree to the effect that, as the representative of the engineers' craft, it had the exclusive statutory right, created by the Railway Labor Act, to treat, bargain, and contract collectively with the carrier concerning all rules and working conditions which pertain to the entry into the craft of locomotive engineers or govern the service to be performed by members of that craft; that the three items covered by the Mediation Agreement, hereinbefore set forth governed the regulation of such matters; hence the carrier had violated the Railway Labor Act in bargaining, and in entering into the Mediation Agreement, with the representative of the firemen's craft, and, therefore, the Mediation Agreement should be declared void (R. 20-34). While petitioner objected to the fact that the Mediation Agreement was in conflict with the rules theretofore agreed upon between petitioner and the carrier, the theory upon which petitioner's action was based and the vice complained of were the illegality of the carrier's bargaining with the representative of the firemen's craft, and its contracting with the latter concerning the subject matter of the Mediation Agreement.

With permission of the District Court the carrier made the representative of the firemen's craft third party defendant.

The District Court held that the matters covered by the Mediation Agreement affected both crafts, that the carrier had the right to negotiate and contract with the designated representative of each craft concerning matters covered by the Mediation Agreement, that the Mediation Agreement was valid and did not violate the Railway Labor Act or infringe any right or agreement of the petitioner; and on June 30, 1941, entered a declaratory decree accordingly, but nevertheless dismissed petitioner's complaint (R. 68-78).

The Circuit Court of Appeals held that the Engineers' Committee did not have the exclusive right to bargain and agree concerning the subjects covered by the Mediation Agreement, and that the matter was of concern to both crafts; that the Mediation Agreement was not illegal, but that the same was incomplete as not binding the craft of engineers. The Circuit Court of Appeals entered a declaratory decree in lieu of the decree of the District Court and affirmed the judgment of the District Court as so modified (R. 296, 304).

STATUTE INVOLVED.

This case involves the construction of the Railway Labor Act as amended (Act of May 20, 1926, c. 347, 44 Stat. 577; Act of June 21, 1934, c. 691, 48 Stat. 1185; 45 U.S.C. §§ 151 *et seq.*). Pertinent sections are set forth in the Appendix hereto.

Portions of the Act more particularly involved are here quoted:

Paragraph First of Section 2 provides that

> "It shall be the duty of all carriers, their officers, agents and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions * * * in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof."

Paragraph Second of Section 2 provides that

> "All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute."

Paragraph Fourth of Section 2 provides, in part, as follows:

"Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. * * *."

Paragraph Ninth of Section 2 provides, in part, that when a craft representative has been duly designated "the carrier shall treat with the representative * * * as the representative of the craft or class for the purposes of this Act."

QUESTIONS PRESENTED.

(1) Does the Railway Labor Act, which creates in the majority of a craft or class "the right to determine who shall be the representative of the craft or class for the purposes of" the Act (a) vest in the duly designated representative of the craft of locomotive engineers the exclusive right to bargain and contract collectively concerning the rules and working conditions which pertain to entry into said craft and to the service to be performed by members of said craft, notwithstanding that members of the craft of locomotive firemen claim to be interested in, or concerned with, such rules; or does that Act (b) permit or direct dual representation, by the craft representatives of the two crafts, concerning such rules?

(2) Was the right of the designated representative of the craft of locomotive engineers invaded and infringed when the carrier bargained with the designated representative of the firemen's craft and entered into an agreement with said firemen's representative concerning rules governing (a) who should be called to perform service as an emergency locomotive engineer when the engineers' extra board is exhausted, (b) the regulation of the working lists of engineers, and (c) the method of filling vacancies on the engineers' pool board when no extra engineers are available to perform service as engineers?

REASONS FOR GRANTING THE WRIT.

1. The decision of the Circuit Court of Appeals in the instant case, 132 F. 2d 91, is in conflict with the decision of the Circuit Court of Appeals for the Ninth Circuit on the same matter in the case of *General Committee of Adjustment of the Brotherhood of Locomotive Engineers for Pacific Lines of Southern Pacific Co. v. Southern Pacific Co. et al.*, 132 F. 2d 194.

2. The Circuit Court of Appeals has decided a federal question probably in conflict with the decision of this Court in *Virginian R. Co. v. System Federation No. 40*, 300 U. S. 515.

3. The Circuit Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court.

4. The Circuit Court of Appeals has erroneously decided questions of great public importance which affect the relationships between employer and employees on practically all railroads in the country and the proper functioning of the Railway Labor Act, as amended.

Argument in support of these reasons is contained in our brief, *post*.

WHEREFORE, it is respectfully submitted that this petition for writ of certiorari should be granted to review the judgment of the Court below.

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Attorneys for Petitioner.

HORN, WEISELL, MCLAUGHLIN & LYBARGER,
Of Counsel.

In the Supreme Court of the United States

No. .....

OCTOBER TERM, 1942.

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE MISSOURI-KANSAS-TEXAS RAILROAD, an unincorporated association,

Petitioner,

v.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, a corporation, MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS, a corporation, and GENERAL GRIEVANCE COMMITTEE OF THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, an unincorporated association,

Respondents.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

OPINIONS BELOW.

The opinion of the Circuit Court of Appeals and the record reference to the unreported opinion of the District Court are cited in the petition.

JURISDICTION.

The grounds on which the jurisdiction of this Court is invoked are stated in the petition.

STATEMENT.

A statement of the case has been set forth in the petition and in the interest of brevity is not repeated here.

STATUTE INVOLVED.

This case involves the construction of the Railway Labor Act as amended (Act of May 20, 1926, c. 347, 44 Stat. 577; Act of June 21, 1934, c. 691, 48 Stat. 1185; 45 U. S. C. §§ 151 *et seq.*). Pertinent sections are set forth in the Appendix hereto.

SPECIFICATION OF ERRORS INTENDED TO BE URGED.

The Circuit Court of Appeals erred:

(1) In holding that the petitioner, as the representative of the craft of locomotive engineers on the Missouri-Kansas-Texas Railroad, did not have the exclusive right under the Railway Labor Act to confer and agree with the carrier concerning the rules governing the entry of employees into the craft of engineers, whether such entry resulted from a transfer of employees from the craft of firemen to the craft of engineers, or otherwise.

(2) In holding that such matter was the concern of both the crafts of locomotive engineers and locomotive firemen, and that the representatives of both crafts are by the Act directed to confer, and, if possible, agree.

(3) In holding that the Mediation Agreement between the carrier and the Firemen's Committee is not illegal and void.

(4) In failing to hold that the right to negotiate and make with the carrier agreements concerning rules and working conditions of the craft of locomotive engineers is exclusively the right of petitioner as the duly designated representative of that craft.

(5) In failing to hold that the action of the carrier in negotiating with the Firemen's Committee concerning the rules contained in the Mediation Agreement was illegal.

ARGUMENT.

The argument herein contained is not addressed to the merits of the case, discussion of the merits being reserved for petitioner's brief in the event the writ is allowed, but is directed to the support of the reasons for granting the writ.

1. The decision of the Circuit Court of Appeals in the instant case is in conflict with the decision of another Circuit Court of Appeals on the same matter.

The decision of the Circuit Court of Appeals for the Fifth Circuit in this case, 132 F. 2d 91, is in direct conflict with the decision of the Circuit Court of Appeals for the Ninth Circuit in the case of *General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Pacific Lines of Southern Pacific Company v. Southern Pacific Company et al.*, 132 F. 2d 194, decided November 13, 1942, petition for rehearing denied with modification of opinion, on January 22, 1943.

With respect to the first of the Questions Presented herein, the *Southern Pacific* case upholds the exclusive right of craft representation and denies dual representation in clear and distinct contrast to the decision in the instant case which upholds dual craft representation and denies exclusive craft representation.

The subject matter of the instant case, to wit, the regulation of the working lists of engineers and the calling of engineers to perform emergency service, is substantially identical with the subject matter of the *Southern Pacific* case considered and discussed therein under point B beginning at page 202 of the opinion, as reported in 132 F. 2d.

In the *Southern Pacific* case the plaintiff, the General Committee of Adjustment of the Brotherhood of Locomotive Engineers, which was the engineers' craft representative, had agreements with the carrier concerning the mileage regulations of engineers, the return to the engi-

neers' working lists of men who had previously been demoted, and the calling of emergency engineers. These mileage regulations and the rules governing the return of demoted engineers to the engineers' working lists were similar to or substantially identical with the regulations of these matters contained in the engineers' and firemen's schedules on the Missouri-Kansas-Texas Lines (R. 96, 102-103, 214, 218-9). The rule governing the calling of emergency engineers in the *Southern Pacific* case* is as follows:

> "It is agreed that when it is necessary to use demoted or hired engineers as the result of the engineers' extra board being exhausted, the senior available engineer will be used, and the fact that he may have earned his maximum mileage as a fireman will not prevent him from being used as an engineer until such time as he has earned the equivalent of the maximum mileage for engineers in the combined service."

As shown in the decision in the *Southern Pacific* case, 132 F. 2d at 203-204, there were included in the firemen's schedule or agreement on that railroad certain rules dealing with mileage regulations which provided for the return of demoted engineers to the working lists of engineers when it could be shown that certain specified maximum mileages could be made by the engineers on the engineers' working lists. Some of these rules became a part of the firemen's agreement as a result of a Mediation Agreement between that carrier and the firemen's craft representative, the General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen, on that railroad. These rules also were similar to the regulations contained in the engineers' and firemen's schedules on the Missouri-Kansas-Texas Lines mentioned above. There were also included in the said firemen's agreement on the Southern Pacific certain questions and answers, growing out of the

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* Quoted from pp. 303-304 of the Record in the Ninth Circuit Court of Appeals.

said Mediation Agreement, dealing with the calling of emergency engineers. These were appended to Article 37, Section 15 of the said firemen's agreement, and were as follows:

> "Question: (a) If it becomes necessary to call a fireman for service as an emergency engineer, when the engineers' extra list is exhausted, who should be called?
>
> (b) Should a senior demoted engineer holding assignment as fireman become available after man used under (a) returns to terminal or completes day's work, who should be used?
>
> Answer: (a) The senior available qualified man in accordance with his seniority as engineer.
>
> (b) The senior available man."

In the instant case Item 1 of the Mediation Agreement (R. 27) provides that when necessary to call a demoted engineer the senior available demoted engineer will be called. Item 3 of the Mediation Agreement and accompanying letters (R. 27, 32) provide for the elimination of an exception to the rule concerning emergency engineers as theretofore agreed upon between the petitioner and the carrier and which had been in effect only at Smithville, Texas. It is thus apparent that the situation in the *Southern Pacific* case concerning the rules for calling of emergency engineers is substantially identical in fact and identical in principle with the situation in the instant case. Likewise, the controversies concerning mileage regulation in the *Southern Pacific* case and in the instant case are identical in principle, although they deal with different aspects of such regulation.

The Engineers' Committee contended in both cases that the rules in question were engineers' rules and the respective carriers had no right to negotiate or contract with the Firemen's Committee respecting them.

With respect to these matters the Circuit Court of Appeals for the Ninth Circuit in the *Southern Pacific* case

held that the Railway Labor Act "contemplates that the cleavage of the powers of the firemen's and engineers' crafts to agree with the employer is at the point of imposing conditions of entry into the one craft or the other," 132 F. 2d 194, 205, and with particular reference to the aforementioned questions and answers governing the calling of engineers for emergency service the court decreed that they were "valid only in so far as they relate to their rights as firemen as such under said section (that is, Article 37, Section 15 of the firemen's agreement) and they are invalid under said Act in so far as they relate to entry of firemen into the craft of engineers," 132 F. 2d 194, 206.

With respect to the provisions in the firemen's agreement concerning mileage regulations and the return of demoted engineers to the working lists of engineers, the court held that such regulations are to be interpreted in effect as claimed by the Engineers' Committee, namely, that such regulations should "be limited in their application to conditions under which demoted engineers enter, remain in, and leave the firemen's craft, and that said sections [regulations] are invalid in so far as they seek to prescribe conditions of reentry into the engineers' craft or to regulate the mileage of engineers or the number of engineers to be assigned to engineers' working lists, whether in passenger, freight, or extra service," 132 F. 2d 194, 205.

Thus the decision of the Ninth Circuit Court of Appeals in the *Southern Pacific* case holds invalid the rules in the firemen's schedule concerning the calling for service as emergency engineers and the regulation of the working lists of engineers, for the reason that the cleavage of the power of the two crafts is at the point of imposing entry into the one craft or the other. As held in that case, the regulation of the engineers' working lists and the calling of emergency engineers for service as engineers is for regulation by the engineers' craft representative exclusively.

On these same matters the decision of the Fifth Circuit Court of Appeals in the case at bar held that the inclusion in the firemen's schedule of rules governing the regulation of the working lists of engineers and the calling for service of emergency engineers was not invalid and that the engineers did not have an exclusive right of representation in such matters, and that such matters were the concern of both crafts.

The *Southern Pacific* decision stands for and upholds the doctrine of exclusive craft representation. The decision in the instant case stands for and upholds the doctrine of dual representation. These two decisions as they now stand cannot be reconciled.

2. The Circuit Court of Appeals has decided a federal question in a way probably in conflict with the decision of this Court in Virginian R. Co. v. System Federation No. 40, 300 U. S. 515.

In *Virginian R. Co. v. System Federation No. 40*, 300 U. S. 515, the doctrine was firmly established that the duly designated representative of a craft or class has the exclusive right to negotiate a collective agreement "concerning rates of pay, rules and working conditions" for the employees comprising the craft or class it represents. This Court there said (p. 548) that the Act "imposes the affirmative duty to treat only with the true representative, and hence the negative duty to treat with no other."[1] The injunction there upheld, the Court continued, "must be taken to prohibit the negotiation of labor contracts, gener-

[1] The Court in a footnote quoted with approval the following statement from the Government's brief in this case:

> "When the majority of a craft or class has (either by secret ballot or otherwise) selected a representative, the carrier cannot make with anyone other than the representative a collective contract (i.e., a contract which sets rates of pay, rules, or working conditions), whether the contract covers the class as a whole or a part thereof."

ally *applicable to employees in the mechanical department* [i.e., those represented by the respondent System Federation] with any representative other than respondent ***." (Emphasis ours).

In the case at bar, the rules contained in the Mediation Agreement are, in terms, *applicable only to engineers.* They govern the entry of employees into the craft of engineers and service to be performed in the engineers' craft. Since these rules were negotiated by a representative other than the duly designated representative of the engineers, it follows, under the *Virginian R. Co.* case, that the action of the railway in bargaining upon this subject was unlawful, and that the agreement therefore must be held void.

The decision of the Circuit Court of Appeals herein is in conflict with the principle of exclusive craft representation as declared in the *Virginian R. Co.* case. The Circuit Court decreed and declared (1) that petitioner "has not the exclusive right under the Railway Labor Act to confer and agree about the rules transferring employees from the craft of firemen *to* the craft of engineers" (R. 302). The effect of this declaration is that petitioner has not the exclusive right to confer and agree respecting the rules applicable to the craft of engineers, i.e., the rules governing who may *take* or *fill* assignments as emergency engineers or in pool service and who shall regulate engineers' mileage.

The Circuit Court decreed and declared (2) that the representatives of both crafts are by the Act *directed* to confer with the employer on the subject of such rules (R. 302). This construction of the Act requires what amounts to dual representation of the craft of engineers. It means that the Engineers' Committee cannot make and maintain engineers' rules without the participation and concurrence of the Firemen's Committee. Plainly, this is not the ex-

clusive representation provided for by the Act, as construed in the *Virginian R. Co.* case.

The fact that the Circuit Court held that the Mediation Agreement is not binding upon the craft of engineers and is "incomplete" (R. 302) does not obviate the conflict with the *Virginian R. Co.* case. In holding that the Mediation Agreement is not illegal and void (R. 302), the Circuit Court permits the Agreement to remain in effect, with the anomalous result that the engineers' rules now in force are those negotiated by a representative other than the duly designated representative of the engineers' craft. In declaring (R. 302) that the employer can terminate the agreement if the engineers do not acquiesce in it (thereby making termination optional, and placing the burden upon the engineers to persuade the company to terminate) the Circuit Court disregards this Court's interpretation of the negative provisions of the Act which prohibit the carrier from negotiating with a representative other than the true one. The result is that the Circuit Court has deprived petitioner of its right to have the agreement declared void. Moreover, that the fact that the Circuit Court held that the agreement is not binding upon the engineers does not furnish escape from conflict with the *Virginian R. Co.* case on the subject of dual representation, for, in future negotiations respecting these or similar rules, the Circuit Court's construction would require dual, rather than exclusive, representation.

3. The Circuit Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court.

4. The Circuit Court of Appeals has erroneously decided questions of great public importance which affect the relationships between employer and employees on practically all railroads in the country and the proper functioning of the Railway Labor Act, as amended.

This Court should grant certiorari to settle the important question of the construction of the provisions of the Railway Labor Act concerning craft representation. The extent of the right of exclusive representation in the craft representative vitally affects the functioning of the Act. The case at bar exhibits the conflicts which arise between craft representatives over the exclusive right to make agreements covering their respective crafts—a type of controversy generally known as jurisdictional disputes. There are 23 crafts on the railroads which are covered by such agreements.[2] Such disputes may arise between many of these crafts; for example, between engineers and firemen, conductors and trainmen, telegraphers and clerks, and various of the shop crafts. The importance[3] to the public as well as to the parties of the questions here presented is demonstrated by the following facts. The craft representatives, which are usually the so-called national or standard railway labor organizations, represent the great majority of all members of their crafts in railroad employ throughout the country. Such disputes characteristically

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[2] Eighth Annual Report of the National Mediation Board (1942), p. 42.

[3] "After a labor organization establishes its right to represent a craft or class of employees the most important task which confronts it, as well as the carrier, is to negotiate a labor agreement." National Mediation Board, op. cit. p. 40.

involve a threatened strike.[4] In the absence of settlement of these questions by this Court, disputes of this character are likely to spring up all over the country, as in the case of *General Committee of Adjustment etc. v. Southern Pacific Co., supra.* The long history of such disputes renders it unlikely that they can be settled by the parties without the aid of a decision of this Court construing the statutory right of exclusive representation. It is confidently asserted that a decision of this Court herein will serve as a needed guide by which such controversies may peacefully be settled and collective craft agreements may be made and maintained as contemplated by the Act.

The petitioner earnestly contends that dual representation, as here permitted and approved by the Circuit Court, can only result in chaos. Where there is rivalry between crafts, as between engineers and firemen, and conductors and trainmen, there is hardly a rule of one craft in which, under the Circuit Court's theory of representation, some members of the rival craft would not be interested. Yet the Circuit Court's holding is that under such circumstances no valid "perfect or complete" collective bargaining agreement can be made unless all crafts whose members have any interest therein join in the agreement. Naturally, such rivalry renders it exceedingly difficult, if not impossible, to consummate tri-partite agreements. The result is that dual representation would frustrate the purpose of the Act in facilitating the making and maintaining of *craft* agreements —a most important feature of the statutory plan.

The construction of the Act sought by petitioner resolves these rivalries. Petitioner contends that the right of representation and the terms "rules" and "working con-

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[4] In the instant case, the Mediation Agreement was made under pressure of a threatened strike by the firemen (R. 198), and the decision of the Circuit Court of Appeals, in stating that the carrier is not protected against the "discontent" of the engineers over its terms (R. 301), indicates that ultimately the engineers might have to resort to a strike to secure its cancellation.

ditions," as used in the Act, should be construed to the following effect:

The exclusive right of a duly designated representative of a craft to bargain collectively extends to the rules and working conditions which govern that craft, including rules which pertain to the entry into the craft and the services performed or to be performed by the members of such craft.

Such a construction will result in rules which are feasible and workable, and just and equitable to each craft.

The decision of the Fifth Circuit Court of Appeals creates complete confusion as to the meaning of the Act. The Ninth Circuit Court of Appeals holds that the right of craft representation is exclusive. The Fifth Circuit Court of Appeals says that any craft whose members have an interest in any of the rules or working conditions of another craft must join in the agreement establishing such rules before the contract may be complete. Under such inconsistent constructions of the Act, it will fail of its purpose as "an instrument of peace rather than of strife." *Texas and N. O. R. Co. v. Ry. Clerks*, 281 U. S. 548, 570.

CONCLUSION.

It is respectfully submitted that a writ of certiorari should be issued.

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APPENDIX.

Sections 1 and 2 of the Railway Labor Act of May 20, 1926, c. 347, 44 Stat. 577, as amended June 21, 1934, c. 691, 48 Stat. 1185, U.S.C., Tit. 45, §§ 151-163.

DEFINITIONS

SECTION 1. When used in this Act and for the purposes of this Act—

First. The term "carrier" includes any express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such "carrier": Provided, however, That the term "carrier" shall not include any street, interurban, or suburban electric railway, unless such a railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso.

Second. The term "Adjustment Board" means the National Railroad Adjustment Board created by this Act.

Third. The term "Mediation Board" means the National Mediation Board created by this Act.

Fourth. The term "commerce" means commerce among the several States or between any State, Territory, or the District of Columbia and any foreign nation, or between any Territory or the District of Columbia and any State, or between any Territory and any other Territory, or between any Territory and the District of Columbia, or within any Territory or the District of Columbia, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign nation.

Fifth. The term "employee" as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders: Provided, however, That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission.

Sixth. The term "representative" means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

Seventh. The terms "district court" includes the Supreme Court of the district of Columbia; and the term "circuit court of appeals" includes the Court of Appeals of the District of Columbia.

This Act may be cited as the "Railway Labor Act."

General Purposes

Sec. 2. The purposes of the Act are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this Act; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

General Duties

First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

Third. Representatives, for the purposes of this Act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce

the other in its choice of representatives. Representatives of employees for the purposes of this Act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: Provided, That nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

Fifth. No carrier, its officers, or agents shall require any person seeking employment to sign any contract or

agreement promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this Act, then such carrier shall notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way.

Sixth. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: Provided, (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: And provided further, That nothing in this Act shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

Seventh. No carrier, its officers or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act.

Eighth. Every carrier shall notify its employees by printed notices in such form and posted at such times and places as shall be specified by the Mediation Board that all disputes between the carrier and its employees will be handled in accordance with the requirements of this Act, and in such notices there shall be printed verbatim, in large

type, the third, fourth, and fifth paragraphs of this section. The provisions of said paragraphs are hereby made a part of the contract of employment between the carrier and each employee, and shall be held binding upon the parties, regardless of any other express or implied agreements between them.

Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

Tenth. The willful failure or refusal of any carrier, its officers or agents to comply with the terms of the third, fourth, fifth, seventh, or eighth paragraph of this section shall be a misdemeanor, and upon conviction thereof the carrier, officer, or agent offending shall be subject to a fine of not less than $1000 nor more than $20,000 or imprisonment for not more than six months, or both fine and imprisonment, for each offense, and each day during which such carrier, officer, or agent shall willfully fail or refuse to comply with the terms of the said paragraphs of this section shall constitute a separate offense. It shall be the duty of any district attorney of the United States to whom any duly designated representative of a carrier's employees may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States, all necessary proceedings for the enforcement of the provisions of this section, and for the punishment of all violations thereof and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States: Provided, That nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.

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In the Supreme Court of the United States

OCTOBER TERM, 1943.

No. 23.

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE MISSOURI-KANSAS-TEXAS RAILROAD, AN UNINCORPORATED ASSOCIATION, PETITIONER,

vs.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, *et al.*

ON WRIT OF CERTIORARI TO
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FOR THE FIFTH CIRCUIT.

BRIEF FOR PETITIONER.

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FOR THE FIFTH CIRCUIT.

BRIEF FOR PETITIONER.

OPINIONS BELOW.

The opinion of the United States Circuit Court of Appeals for the Fifth Circuit (R. 295-300) is reported in 132 F. 2d 91. The opinion of the United States District Court for the Northern District of Texas (R. 70-77) is not reported.

JURISDICTION.

The judgment of the United States Circuit Court of Appeals for the Fifth Circuit was entered on December 9, 1942 (R. 301). The jurisdiction of this Court is invoked under § 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. § 347).

STATUTES INVOLVED.

The statutes involved are:

The Railway Labor Act, as amended (Act of May 20, 1926, c.347, 44 Stat. 577; Act of June 21, 1934, c.691, 48 Stat. 1185; Act of August 13, 1940, c.664, §§ 2, 3, 54 Stat. 785; 45 U. S. C. §§ 151-163), pertinent sections of which are set out in Appendix A;

The Declaratory Judgments Act (Act of June 14, 1934, c.512, 48 Stat. 955, as amended, 28 U. S. C. § 400), which is set out in Appendix B;

The Norris-LaGuardia Act (Act of March 23, 1932, c.90, 47 Stat. 70, 29 U. S. C. §§ 101-115), which is set out in Appendix C.

STATEMENT OF THE CASE.

Petitioner, General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad (hereinafter sometimes referred to as "the representative of the engineers' craft" or "Engineers' Committee"), is the duly designated representative of the craft or class of locomotive engineers (R. 22, 95) upon the lines of the respondents Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas (hereinafter sometimes called the "Carrier"), the Carrier being one subject to the Interstate Commerce Act and the Railway Labor Act (R. 21, 37, 49). The respondent General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen (hereinafter sometimes referred to as "the representative of the firemen's craft" or "Firemen's Committee") is the duly designated representative of the craft or class of locomotive firemen upon the Carrier's lines (R. 25-26, 39, 50).

Petitioner brought this action in the United States District Court for the Northern District of Texas against the Carrier seeking a declaratory judgment under the provisions of 28 U. S. C. § 400 to the effect that as such repre-

sentative it had the *exclusive* statutory *right*, by virtue of the Railway Labor Act, to treat, bargain and contract collectively with the Carrier concerning the rules and working conditions which govern the craft of locomotive engineers; that the rules contained in a so-called Mediation Agreement (R. 27-8), entered into between the Carrier and the Firemen's Committee on December 12, 1940, purport to govern locomotive engineers; and that the Carrier violated the Railway Labor Act in bargaining and in entering into said Mediation Agreement with the representative of the firemen's craft, and hence said Mediation Agreement is void and of no force and effect (R. 20-34).

The Engineers' Committee is, and for more than forty years has been, the recognized representative of the craft of locomotive engineers on the Carrier's lines (R. 95). It entered into a written agreement (Plaintiff's Ex. 1, R. 96, 97-104) with the Carrier with reference to rates of pay, rules and working conditions of locomotive engineers on or about October 1, 1918. This agreement, commonly known as the Engineers' Schedule, with some interpretations, modifications or additional agreements, remained in effect from October 1, 1918 to the time of trial (R. 95-6).

In accordance with the provisions of this Schedule and long established practice, the railroad is divided into seniority districts each with definite limits (R. 56). An engineer is employed on a particular seniority district and his seniority usually is confined to that district (R. 56-7). Stated generally, seniority gives to the engineer a preference in the choice of work in accordance with his standing upon the seniority roster of a particular seniority district (Plaintiff's Ex. 1, R. 96, 98, 145), and when it is necessary to reduce the number of engineers on the working lists the reductions are made in reverse order of seniority (Plaintiff's Ex. 1, R. 96, 102). Engineers are assigned on their respective seniority districts to various working lists or

boards which cover the different classes of service operated by the carrier. These include assigned passenger service, assigned freight service, pool[1] freight service or unassigned freight service, yard service, and extra service (R. 141-3). The engineers on such lists normally perform all of the service required by the railroad in these classes of service. For example, engineers on the pool list divide between themselves, "first in first out," the total mileage run between two terminals by trains operating in pool service during a month's time. Men on the extra lists who are called to supply vacancies when the engineers on any of the other lists are not available are similarly called first in and first out, and divide between themselves the total extra mileage available during a month (R. 143-4). Engineers on the various lists are permitted to work a certain number of miles per month according to the class of service in which they are employed. Thus in passenger service they are permitted to make between 4,000 to 4,800 miles per month, in pool service between 3,200 and 3,800 miles per month, and in extra pool service between 2,600 and 3,000 miles per month (R. 147, Plaintiff's Ex. 1, R. 96, 102, 103). The number of engineers assigned to the various working lists is regulated from time to time at regular checking periods and engineers are added to or taken off the lists as business increases or decreases, with the object of keeping the earnings or mileages of the men within the maximum and minimum limitations (R. 149, Plaintiff's Ex. 1, R. 96, 102-4).

---

[1] The engineers' pool is a list of engineers working first in first out in a particular class of service (R. 141-2).

THE RULES AND WORKING CONDITIONS INVOLVED IN THIS CONTROVERSY.

Rule 1. The rule respecting the calling of a demoted engineer to perform service as an emergency engineer.

An emergency engineer is one who is not at the time on a working list of engineers, usually having been demoted from engineer to the position of fireman and working as a fireman, who is called to perform service as an engineer when there is no engineer available on a particular working list of engineers (R. 144, 145, 153). In actual practice (with the exception of the case of the Smithville, Texas, pool which was covered by a special rule hereinafter set forth) an emergency engineer would be called under the following circumstances. When the engineer regularly assigned to a run, or whose turn in the pool it is to take out a particular run, is obliged to lay off, such vacancy would ordinarily be filled by calling the engineer first out on the engineers' extra list (R. 143, 144).[1] If, however, there are no men available on the engineers' extra list an "emergency" would exist, and this vacancy would then be filled by calling a demoted engineer (R. 144) who, after completing such emergency service, would return to the class of work being performed by him at the time he was called for the emergency service. When a man is called as an emergency engineer he is not thereby placed upon the working list of engineers, as is done in the regulation of the working lists mentioned above. As the term implies, he is called solely for the particular emergency.

At the time the Mediation Agreement of December 12, 1940 was entered into, there was in full force and effect a rule negotiated by and between the Engineers' Committee and the Carrier which governed the calling of a man for service as an emergency engineer. This rule limited

---

[1] The engineers' extra board is a list of extra engineers from which vacancies in assigned or pool service are filled (R. 142-3).

the calling of a demoted engineer for such emergency service to the senior demoted engineer *whose home terminal was at the place where such service was required or required to begin* (R. 140-141). It was subject to the exception that if such senior demoted engineer were junior on the seniority list of engineers to a demoted engineer working as fireman on the run on which the service of an emergency engineer was required, then the demoted engineer serving as fireman on that run would be called to serve as the emergency engineer thereon regardless of whether the place at which the service was required was the home terminal of the man so serving as fireman (R. 169-170).

This rule had been in effect for many years, at least as far back as 1932 (R. 141), but, as certain irregularities were found in its application, it was again formally promulgated in a ruling issued by Carrier's Vice President and General Manager, F. W. Grace, on December 14, 1938, reading as follows:

> "In order that a uniform understanding may be had concerning the use of demoted engineers at away from home terminals for what is commonly termed emergency service, the following has been approved by Brotherhood of Locomotive Engineers and is to be observed:
>
> Where engineer cannot be secured from extra board in the usual manner and the use of emergency engineer is necessary the senior demoted engineer (when such is available) the home terminal of whose run or assignment is at the point where the service is required or required to begin will be used." (Plaintiff's Exhibit 2-I, R. 108, 116-117.)

The modification of the general rule above stated was evidenced by a ruling issued by Mr. Grace on May 1, 1939, reading as follows:

> "Question has arisen as to the procedure to be followed under the following circumstances:

'Fireman on freight run is demoted engineer. At the away from home terminal engineer on this run is obliged to lay off. The senior demoted engineer available, with home terminal at that point, is junior to the fireman (who is a demoted engineer) who arrives on the run at the away from home terminal point.'

In providing engineer for the return of this run under circumstances outlined, the fireman (demoted engineer) arriving on the run at point where engineer laid off, would be used as engineer on the return trip; and fireman provided in the usual way to relieve the man used as engineer." (Plaintiff's Exhibit 2-J, R. 108, 117-18.)

Rule 2. The rules and practice governing the regulation of the working lists of engineers.

The working lists of engineers are lists of the men who are to be employed regularly as engineers for a given period. The regulation of such lists includes the regulation of the number of men on such lists and the adding of men thereto or removing them therefrom as the amount of work fluctuates. Men added, in most cases, come from the firemen's working lists, and, when removed, may return to the firemen's working lists (R. 149, Plaintiff's Exhibit 1, R. 96, 102-3, Defendant's Exhibit 1, R. 214, 218-219).

Although the Engineers' Schedule provides for the process of regulation of mileage of engineers so as to keep the earnings within the maximum and minimum limitations as hereinabove set forth, it does not specify whether the process of regulation shall be conducted by the Carrier alone, the Engineers' Committee alone, or by joint action of both. By letters of March 28 and 29, 1923 (R. 29-31), the following agreement was reached between the management and representatives (including the parties herein) of the four train service brotherhoods, Brotherhood of Locomotive Engineers (B. of L. E.), Brotherhood of Locomotive Firemen and Enginemen (B. of L. F. & E.), Order

of Railway Conductors (O. R. C.), and Brotherhood of Railroad Trainmen (B. of R. T.):

"General Grievance Committee,
Missouri-Kansas-Texas Railway System,
St. Louis, March 28, 1923.

Mr. Arthur J. Lovell,
Vice-President B of L F & E,
Annex Hotel, St. Louis, Mo.,
Representing B of L E and B of L F & E.

Mr. G. W. Anderson, Vice President,
B of RT, Annex Hotel,
St. Louis, Missouri.

Mr. F. H. Nemitz, Vice President,
ORC, Annex Hotel,
St. Louis, Mo.

Gentlemen:

Acknowledge your letter of March 28th:

This is to confirm understanding in conference this morning that in the handling of crews Superintendents will be governed by existing rulings and agreements as applied by the committees, except where in conflict with the agreements between the railway and the organizations or with instructions to Superintendents effective as of April 1st, 1923, and, in the event of conflict as above, conference will be had with the General Chairman for the purpose of adopting such rule or agreement as will protect the interests of all concerned.

From verbal statements made by you I see nothing wrong with the agreements to which you refer or any reason why these cannot be carried out and with the understanding that your Local Chairman will be instructed to get in touch with the Superintendent, provide him with copy of rulings and agreements, and render assistance in the way of furnishing information as to these outstanding agreements and practices, we do not anticipate any confusion whatever in the carrying out of our notice effective April 1st, 1923.

Thank you for your assistance and cooperation in this movement.

Yours truly,

(Signed) W. E. WILLIAMS."

(R. 29-30, 40, 51.)

"General Grievance Committee,
Missouri, Kansas & Texas Railway System,
St. Louis, Missouri.

March 29, 1923.

Mr. W. E. Williams, Manager,
Department of Personnel,
Missouri-Kansas-Texas Railway,
St. Louis, Missouri.

Dear Sir:

As a matter of record, this will acknowledge receipt of your letter of March 28th, confirming understanding reached during conference this date, respecting the question of the Management effective April 1st, 1923, taking over the handling of assignments of Enginemen, Conductors, Trainmen and Yardmen, in accordance with existing rules and agreements and rulings made by the General Committees of the four organizations.

Yours truly,

(Sgd.) F. H. NEMITZ,
Vice President, ORC.

(Sgd.) G. W. ANDERSON,
Vice President, B of RT.

(Sgd.) ARTHUR J. LOVELL,
Vice President, B of L F & E,
Also representing the B of LE."

(R. 30, 31, 40, 50.)

Subsequently, by exchange of correspondence between the Engineers' Committee and the Carrier, under dates of April 4, 1923 and April 10, 1923, this agreement was clari-

fied, so far as the engineers were concerned, to show that the handling of the lists would be in accordance with the existing agreement between the Engineers' Committee and the Carrier (Plaintiff's Exhibits 2-P, 2-Q, R. 108, 126-8), and the engineers' working lists were to be handled separately between the Engineers' Committee and the Carrier (R. 168-9). We quote from Exhibit 2-Q as follows:

> "* * * the intent of the instructions we have issued is that superintendents will take over the assignment and handling of men in accordance with the existing agreement between the B. of L. E. and the railroad." (R. 128.)

The effect of this understanding was that the placing of engineers upon and removing them from the engineers' working lists were to be handled by the Engineers' Committee, through its local chairman, and the Carrier (R. 168-9). In actual practice the regulation of the engineers' lists, committed to the management and the Engineers' Committee by the aforementioned agreements, "drifted" into the hands of the Engineers' Committee alone, and at the time the Mediation Agreement of December 12, 1940 was entered into, the practice was, and for some time had been, that the engineers' local chairmen were handling the regulation of the engineers' working lists (R. 158-9).

Rule 3. Rule with respect to the method of filling vacancies in the engineers' pool at Smithville, Texas, when the engineers' extra board was exhausted.

At the time the Mediation Agreement of December 12, 1940 was entered into, there was in full force and effect a written agreement between the Engineers' Committee and the Carrier resulting from correspondence between E. O. Johnson, B. of L. E. General Chairman, and W. E. Williams, Carrier's Manager of Personnel (Plaintiff's Exhibits 2-K and 2-L, R. 108, 119-21), which agreement culminated in the letter of instruction issued by Mr. Wil-

liams to D. C. Dobbins, Carrier's superintendent at Smithville, Texas, reading as follows:

"St. Louis—May 14, 1929.

Mr. D. C. Dobbins:

Referring to your 306 of April 20th, regarding the handling of engineers.

There are no objections to your request that where there are no extra engineers available and there are pool crews on the pool board, that instead of using emergency engineers, the regular pool engineers will be used by setting them up to the next turn ahead, etc.

Emergency vacancies of this kind in pool through freight service should be filled by engineers assigned to this service rather than to use emergency men. This not to apply to vacancies in any other class of service, and should be confined to emergency cases and all other vacancies regulated by not permitting engineers to lay off except where there are extra engineers to fill their places, if there is a sufficient number of engineers assigned to properly take care of the extra work. If a sufficient number is not assigned, assignment should be made as soon as it is known that there are not sufficient number assigned, keeping in mind the mileage limitations of the agreement.

Yours truly,

(Signed) W. E. Williams."

(Plaintiff's Exhibit 2M, R. 108, 121.)

The rule thereby established for the filling of pool vacancies at Smithville was in the nature of an exception to the rule governing the use of emergency engineers as set forth in Rule 1 of this heading (R. 145). The reason for this exception was stated by General Chairman Johnson to be that at this particular point so many engineers were "laying off" at times when extra engineers were not available, resulting in the calling of emergency engineers, that the regularly assigned engineers were not making the minimum mileage permitted by the schedule, and that if all

of the permissible mileage was worked by the assigned engineers the working list could be maintained or in some instances increased by the addition of another man (R. 146-7).

The Mediation Agreement of December 12, 1940. Its conflict with the foregoing rules.

While a threatened strike was pending as a result of a strike vote taken by the Firemen's Committee (R. 198, 201), the Carrier, without joinder or consent of the Engineers' Committee (R. 40, 50), made and entered into a written agreement with the Firemen's Committee as follows:

"Mediation Agreement
Brotherhood of Locomotive Firemen and Enginemen
and
Missouri-Kansas-Texas Lines.

In settlement of differences between the employees of the Missouri-Kansas-Texas Lines, represented by the Brotherhood of Locomotive Firemen and Enginemen, and the carrier above referred to, it is mutually agreed that the questions submitted to mediation by the organization under date of August 7, 1940, National Mediation Board Case A-838, are hereby disposed of as follows:

(1) Effective February 1, 1941, it is agreed when necessary to call a demoted engineer who is back firing to perform service as engineer, the senior available demoted engineer will be called.

(2) Effective February 1, 1941, the carrier will apply the rules in the schedules governing the regulation of working lists in the same manner as contemplated by the letters of agreement dated March 28, 1923, and March 29, 1923, copies of which are attached hereto. It is understood this method of adjusting the lists may be modified by mutual agreement between the carrier and the interested organizations.

(3) The question raised in Item 1 of the application for mediation is disposed of by exchange of letters between the parties and the Board." (R. 27-28.)

The letters of March 28, 1923, and March 29, 1923, referred to in Item 2 of said Mediation Agreement, are the letters set forth at pp. 8, 9 herein (R. 29-31).

The letters referred to in Item 3 of said Mediation Agreement are as follows:

"Washington, D. C., December 12, 1940.

Mr. H. M. Van Sant, Vice President,
Brotherhood of Locomotive Firemen and Enginemen,

Mr. Chas. McKemy, General Chairman,
Brotherhood of Locomotive Firemen and Enginemen,

Washington, D. C.

Gentlemen:

In accordance with the understanding reached in conference today, steps will be taken to adjust the complaint with reference to handling of demoted engineers who are back firing at Smithville to conform to Item 1, of the Mediation Agreement Case A-838, dated today. That is to say, the practice in filling vacancies on engineers' pool board at Smithville will be the same as present practice at other district terminals on the railroad. This will be done as promptly as possible. Will you kindly acknowledge your acceptance.

Very truly yours,

(Signed) F. W. Grace,
Vice President-General Manager,
Missouri-Kansas-Texas Lines.

cc: National Mediation Board." (R. 31, 51.)

"Washington, D. C., December 12, 1940.

Mr. F. W. Grace, Vice President and Gen'l Mgr.,
Missouri-Kansas-Texas Lines,
Washington, D. C.

Dear Sir:

This will acknowledge your letter of even date regarding the complaint with respect to using demoted

Engineers and the handling of engineers' pool board at Smithville.

You have correctly stated the understanding and your assurance that the complaint will be adjusted is accepted.

Yours very truly,

(Sgd.) H. M. VAN SANT,
Vice President, Brotherhood of Locomotive Firemen & Enginemen.

(Sgd.) CHAS. McKEMY,
General Chairman, Brotherhood of Locomotive Firemen & Enginemen.

cc: National Mediation Board." (R. 32, 51.)

As appears from its text in conjunction with the letters annexed thereto, the Mediation Agreement was in direct conflict with (1) the rule with respect to calling emergency engineers, (2) the rule and practice regulating the working lists of engineers, and (3) the rule for filling vacancies in the pool at Smithville, theretofore agreed upon by the Engineers' Committee and the Carrier as hereinbefore set forth under Rules 1, 2 and 3. Whereas Rule 1 had required the use as an emergency engineer of the senior available demoted engineer whose home terminal was at the point where the service was required (R. 108, 116-118), Item 1 of the Mediation Agreement removed the limitation with respect to the terminal and required the use of the senior available demoted engineer without reference to the location of his home terminal (R. 27). Whereas Rule 2 had provided for the regulation of the working lists of engineers by the railroad and the Engineers' Committee, and the practice of having the lists regulated by the Engineers' Committee alone had become definitely established thereunder (R. 158-9, 168-9), Item 2 of the Mediation Agreement, as interpreted and applied by the Carrier, required that the regulation of the engineers' lists be handled by the

Carrier, the Engineers' Committee and the Firemen's Committee (R. 27, 29-31, 148-9). Whereas Rule 3 had required that in the case of a vacancy in the engineers' pool at Smithville when the engineers' extra board was exhausted the vacancy should be filled by "setting up" or assigning the next pool engineer, Item 3 of the Mediation Agreement required such vacancy to be filled by calling the senior available demoted engineer, regardless of where he was located on the seniority district and without reference to whether he was located at the terminal where the service was to be performed (R. 27-8, 31-2, 51).

The Position of the Carrier Prior to the Threat of Strike by the Firemen's Committee and the Making of the Mediation Agreement of December 12, 1940.

On June 23, 1939, the Carrier sought the services of the Mediation Board in a controversy initiated by the Firemen's Committee, respecting the same matters involved in Items 1 and 3 of the Mediation Agreement of December 12, 1940, by addressing a letter to the National Mediation Board, Washington, D. C., with five letters attached thereto, designated as "attachments" (Plaintiff's Exhibit 3, R. 174, 175-190). In said letter, the Carrier, acting by and through F. W. Grace, its Vice President and General Manager, set forth the questions involved as follows:

> "As to Item 1 (Attachment No. 1): The question involved was the subject of a letter of your Board, dated June 23, 1938, file C 17, to this Carrier, asking a statement on a dispute, submitted to the Board by the Brotherhood of Locomotive Firemen & Enginemen, stated as follows:
>
> > 'Refusal of Carrier to use qualified engineers who have been demoted to firing service, to fill temporary vacancies as engineers in pool freight service when the engineers' extra board is exhausted at Smithville, Texas, or in the same manner as such demoted engineers are used to fill a vacancy

in yard service at Smithville or outlying points when engineers' extra board is exhausted.' " (R. 176.)

* * * * *

"As to Item No. 2: In June, 1938, the General Chairman of the Brotherhood of Locomotive Engineers complained to the carrier of a lack of uniformity in the use of engineers for 'emergency' service, at away from home terminals, and the following instructions were issued December 14, 1938, with the concurrence of the General Chairman of the Engineers' Organization:

'Where engineer cannot be secured from extra board in the usual manner and the use of emergency engineer is necessary the senior demoted engineer (when such is available) the home terminal of whose run or assignment is at the point where the service is required or required to begin will be used.' (R. 177.)

Item No. 3: This is referred to as the 'Roach case.' This reference is to a particular happening, but it really involves, as the last paragraph of the letter of May 25th (Attachment No. 1) shows, the broad question of regulating the engineers' working lists generally." (R. 177.)

The Carrier at that time stated in said letter its position to the effect that it had no right to treat with the Firemen's Committee on the matters involved in said questions. We quote from the letter as follows:

"It will be obvious from the foregoing—*That the class of service involved* in the questions at issue *is that of locomotive engineer.*[1] That the Brotherhood of Locomotive Firemen & Enginemen seeks to have the carrier adopt certain rules representing its views for the handling of locomotive engineers; *That the carrier is being asked by the Brotherhood of Locomotive Firemen & Enginemen to treat with the firemen's organization as (at least partially) the representative*

[1] Italics ours in this and all other quotations under this heading.

of the class of service of locomotive engineer, for which class the carrier understands the Brotherhood of Locomotive Engineers is the accredited and the exclusive representative." (R. 178.)

This position of the Carrier was, in effect, a re-statement of the position previously taken by the Carrier on the same matters as set forth in Attachments 3, 4 and 5 to said letter, from which the excerpts hereinafter set forth are taken:

Excerpts from Attachment 3, being a letter from the Carrier to the Secretary of the National Mediation Board, dated July 6, 1938:

"This dispute grows out of a complaint made by the firemen's organization about a practice followed at Smithville, Texas, for a number of years, whereby men on the engineers chain gang or pool freight board, when vacancies occur due to men being off and the assigned extra engineers are not available, the engineers regularly assigned to the pool board are moved up to fill the vacancies, until assigned extra engineers are again available." (R. 184.)

"* * * The agreement with the engineers' organization contains the following:

'We affirm the right to make and interpret contracts, rules, rates and working agreements for locomotive engineers shall be vested in the regularly constituted committees of the Brotherhood of Locomotive Engineers.'

The following statements seem pertinent to the subject:

The service involved in the dispute is not service of locomotive firemen; it is service of locomotive engineers. It involves individuals who have been promoted to engineers, but who by reason of insufficient train service are normally reduced to firing.

The practice complained of by the firemen's organization was in existence from March, 1929, until December, 1937, before a complaint was made.

While we have not denied and have no intention of denying the firemen's organization's right to represent such individual engineers as may elect to have such representation, we think we are bound to recognize the right of the engineers' organization to represent locomotive engineers, as a class.

Replying to the specific questions you ask:

Question: Whether the dispute involves a request of the organization for a change in rules of existing agreement.

Answer: The firemen's organization is seeking to apply the interpretation of the organization to the situation in question, whereas the engineers' organization, which is the accredited representative of the locomotive engineers as a class, denies the right of the firemen's organization to interfere with the interpretation, application, etc., of the engineers' agreement.

Question: Whether the organization has served thirty days notice of change in rules.

Answer: No. The agreement involved is that with the locomotive engineers, whereas the complainant is the locomotive firemen.

Question: Whether the dispute involves the application or interpretation of existing rules.

Answer: Yes. But not of existing rules negotiated by the complainant organization." (R. 185-186.)

Excerpt from Attachment 4, being letter from the Carrier to Mr. Charles McKemy, General Chairman of the Firemen's Committee, dated December 19, 1938:

> "What we consider our obligation is simply stated. That is, we are obligated to recognize the Brotherhood of Locomotive Engineers as the accredited and exclusive representative of locomotive engineers as a class." (R. 187.)

Excerpts from Attachment No. 5, being a letter from the Carrier to Mr. Charles McKemy, General Chairman of the Firemen's Committee, dated April 11, 1939:

"In any case, however, we consider it our obligation, imposed upon us by statute, to treat with the engineers' organization as the accredited representative *for the services of men used as engineers*, the same as we consider the firemen's organization in connection with the services of men used as firemen; and we have not and do not now consider it lawful or proper for us to enter into an understanding or agreement with an organization representing *one class to cover the handling of men used in another service*, for which there is an accredited representative for that class." (R. 189.)

"* * * we shall also recognize what we consider the exclusive right of the engineers' organization *to legislate for locomotive engineers as a class*; and that no agreement has been made with your or any other organization, or in our opinion could lawfully be made, which abridges such right." (R. 189-190.)

Mr. Grace, Vice President and General Manager of the Carrier, testified (R. 198) that prior to the time of the strike threatened by the Firemen's Committee in 1940 the Carrier had taken the position it was obligated to treat only with the engineers' organization as the accredited representative of the engineers on the matters involved in the Mediation Agreement, and that the Carrier in changing its position was influenced by the threat of strike (R. 201).

Events Subsequent to the Mediation Agreement of December 12, 1940.

On December 19, 1940, the Carrier gave notice (Plaintiff's Exhibits 2-R, 2-S, R. 108, 128-131) that it would cancel the aforesaid existing agreements (Plaintiff's Exhibits 2-I, 2-J, R. 108, 116-8, also quoted at R. 128-131, 2-M, R. 108, 121) which had been entered into with the Engi-

neers' Committee covering the subjects contained in Items 1 and 3 of the Mediation Agreement of December 12, 1940. Following such notices conferences were held between the Engineers' Committee and the Carrier, but no agreement was reached (R. 161). The Engineers' Committee then invoked the aid of the Mediation Board, but mediation failed (R. 161). On March 24, 1941, the Carrier again gave notice that the agreements with the Engineers' Committee would be canceled as of April 13, 1941 (Plaintiff's Exhibit 2-X, R. 108, 137-138) and they were so canceled by the Carrier on said date (R. 161). No notice was given of any change in the agreements constituting the subject matter of Item 2 of the Mediation Agreement, but the Carrier changed its practice thereunder by requiring concurrence of the Firemen's Committee in the regulation of the engineers' working lists (R. 149).

The Engineers' Committee then instituted this action, as aforesaid, seeking a declaratory judgment to the effect that, as the representative of the engineers' craft, it had the exclusive statutory right, created by the Railway Labor Act, to treat, bargain and contract collectively with the Carrier concerning the rules and working conditions which pertain to the entry into or removal from the craft of locomotive engineers or govern the services to be performed by members of that craft; that the three items included in the aforesaid Mediation Agreement related to and concerned rules and working conditions governing said craft of engineers and the regulation of such matters; that, hence the Carrier had violated the Railway Labor Act in bargaining, and in entering into the Mediation Agreement, with the representative of the firemen's craft, and, therefore, the Mediation Agreement should be declared void and of no force and effect (R. 20-34). While the Engineers' Committee objected to the fact that the Mediation Agreement was in conflict with the rules theretofore agreed upon between the Engineers' Committee and the Carrier, the theory

upon which the action was based and the vice complained of were the illegality of the Carrier's bargaining with the representative of the firemen's craft, and its contracting with the latter concerning the subject matter of the Mediation Agreement.

With permission of the District Court the Carrier made the representative of the firemen's craft third party defendant (R. 9).

The District Court held that the matters covered by the Mediation Agreement covered both crafts, that the Carrier had the right to negotiate with the designated representatives of both crafts, or either of them, concerning matters covered by the Mediation Agreement, that the Mediation Agreement was valid and did not violate the Railway Labor Act or infringe any right or agreement of the petitioner; and entered a declaratory decree accordingly, but nevertheless dismissed the complaint (R. 68-78).

Upon review, the Circuit Court of Appeals for the Fifth Circuit, pursuant to its opinion rendered on December 9, 1942 (R. 295-300, 132 F. 2d 91), entered the following declaratory decree in lieu of the decree of the District Court and affirmed the judgment of the District Court as thus modified:

"It is now here decreed and declared:

1. That the appellant Committee as the representative of the engineers has not the exclusive right under the Railway Labor Act to confer and agree about the rules for transferring employees from the craft of firemen to the craft of engineers, or vice versa; but the matter being the concern of both crafts, the representatives of both crafts are by the Act directed to confer and if possible agree.

2. The mediated agreement with the Firemen's Committee is not illegal and void, but it is incomplete as not binding the craft of engineers, and if not acquiesced in by the engineers, the employer can terminate it under the Act.

It is further ordered, adjudged and decreed that the decree of the said District Court in this cause as so modified be, and the same is hereby, affirmed. Costs of appeal to be paid one-half by appellant and one-half by appellees. * * *" (R. 301.)

Petition for certiorari was filed in this Court on March 8, 1943, and the order allowing certiorari was granted on May 24, 1943 (R. 305).

QUESTIONS PRESENTED.

At the time the writ of certiorari was allowed, the court requested counsel to discuss in their briefs and on oral argument the following questions, so far as applicable:

1. Whether resort to the declaratory judgment procedure is appropriate in the circumstances;

2. Whether any questions of the construction of the contracts involved are governed by state or by Federal law;

3. What bearing, if any, the Norris-LaGuardia Act has on the propriety of granting the relief sought.

Questions presented upon the merits are:

1. Does the Railway Labor Act, which creates in the majority of a craft or class "the right to determine who shall be the representative of the craft or class for the purposes of" the Act, vest in the duly designated representative of the craft of locomotive engineers the exclusive right to bargain and contract collectively concerning the rules and working conditions which pertain to or govern the entry of engineers into, and their removal from, said craft, and the service to be performed by the members of said craft?

2. Was the right of the designated representative of the craft of locomotive engineers invaded and infringed when the carrier bargained with the designated representative of the firemen's craft and entered into an agree-

ment with said firemen's representative concerning rules governing (1) the calling of demoted engineers to perform emergency service as engineers (who should be called to perform service as an emergency engineer when the engineers' extra board is exhausted), (2) the regulation of the working lists of engineers, and (3) the method of filling vacancies on the engineers' pool board when no extra engineers are available to perform service as engineers?

SPECIFICATION OF ERRORS.

The Circuit Court of Appeals erred:

1. In holding that the petitioner, as the representative of the craft of locomotive engineers, has not the exclusive right, under the Railway Labor Act, to confer and agree about the rules for transferring employees from the craft of firemen to the craft of engineers; and in holding that such matter being the concern of both crafts, the representatives of both crafts are by the Act directed to confer, and, if possible, agree.

2. In holding that the petitioner, as the representative of the craft of locomotive engineers, has not the exclusive right under the Railway Labor Act to confer and agree with the Carrier concerning the rules governing the entry of employees into, and their removal from, the craft of engineers.

3. In holding that the matter of rules governing entry into the craft of engineers was the concern of both the crafts of locomotive engineers and locomotive firemen, and that the representatives of both crafts are by the Act directed to confer, and, if possible, agree.

4. In holding that the Mediation Agreement of December 12, 1940, entered into between the Carrier and the Firemen's Committee is not illegal and void.

5. In failing to declare the Mediation Agreement of December 12, 1940, invalid, although it held such agree-

ment to be incomplete and not binding on the craft of engineers.

6. In failing to hold that the right to negotiate and make with the Carrier agreements concerning rules and working conditions of the craft of locomotive engineers is exclusively the right of the Engineers' Committee as the duly designated representative of that craft.

7. In failing to hold that the action of the Carrier in treating and contracting with the Firemen's Committee concerning the rules contained in the Mediation Agreement was illegal.

8. In failing to declare the said Mediation Agreement invalid in so far as it provides for rules governing performance of service in the engineers' craft or pertains to entry into the engineers' craft or to removal therefrom or to regulation of the engineers' working lists.

SUMMARY OF THE ARGUMENT.

A substantial, definite controversy concerning adverse legal interests and touching the legal relations of the parties appropriate for judicial determination exists between the parties herein. No questions of comity between federal and state courts are involved, and the case is one where, in the exercise of proper judicial discretion, the court should take jurisdiction to make a declaration.

The case depends upon the construction of the Railway Labor Act and raises the question of whether the Engineers' Committee, as the designated representative of the craft of locomotive engineers, has the exclusive right to negotiate and contract with the Carrier concerning all rules and working conditions governing entry of engineers into and their removal from the craft of locomotive engineers and the services to be performed by members of the craft, and whether the Carrier is prohibited by the Act from treating and contracting concerning such matters with the

Firemen's Committee. Since no question of the construction of the terms of a contract is involved but only a question of the validity of such contract under the Railway Labor Act, there are no questions of the construction of contract involved which are governed by state law and federal law should be applied.

The Norris-LaGuardia Act does not negative the propriety of granting the relief sought and has no bearing thereon, since no injunction is asked. One of the purposes of the Railway Labor Act is to require carriers and employees to make every reasonable effort to enter into agreements concerning rules and working conditions and to require the carrier to treat only with the true craft representative in such matters. This purpose is in harmony with the public policy declared in the Norris-LaGuardia Act, and no provision of that Act immunizes from injunction the act of a carrier in treating and contracting with one other than the true craft representative. The Railway Labor Act was enacted subsequent to the Norris-LaGuardia Act, and this Court has held that the provisions of the Railway Labor Act may not be rendered nugatory by the earlier provisions of the Norris-LaGuardia Act.

Under the Railway Labor Act, as construed by this Court in *Virginian R. Co. v. System Federation No. 40, et al.*, 300 U. S. 515, the Engineers' Committee, as the duly designated representative of the craft of locomotive engineers on the Carrier's lines of railroad, has the exclusive right of representation of that craft. This right of exclusive representation extends to the negotiation of and contracting for all rules and working conditions governing admission of engineers to or their removal from the craft and governing the services performed by those employed in that craft. In entering into the Mediation Agreement of December 12, 1940 with the Firemen's Committee, which is the representative of the firemen's craft on the Carrier's lines of railroad and is not and never has been the repre-

sentative of the engineers' craft thereon, the Carrier violated the duty imposed upon it by the Railway Labor Act which prohibited it from treating with the Firemen's Committee on the matters therein involved, since such matters related to and were concerned with rules governing entry into or removal from the craft of locomotive engineers or services to be performed by members of that craft. The craft of locomotive engineers and the craft of locomotive firemen are admittedly two separate crafts, and the line of demarcation between them is at the point of entry into the one craft or the other (*General Committee of Adjustment v. Southern Pacific Company, et al.*, 132 F. 2d 194). The Circuit Court of Appeals, though holding that the Mediation Agreement was incomplete, nevertheless held it to be validly entered into, and thus failed to enforce petitioner's right of exclusive representation, and, in effect, upheld a doctrine of dual representation concerning matters involved in the Mediation Agreement, contrary to the holding of the *Virginian R. Co.* case, *supra*.

The Railway Labor Act should be construed as herein contended by petitioner, because such construction upholds the specific statutory provision creating the right of majority craft representation and sustains and makes realistic the right of exclusive craft representation in treating with the carrier under Section 2, Ninth, of the Act. It draws a desirable and workable line of demarcation between the rights of the crafts to treat, bargain, and contract collectively with the carrier, so that each craft is properly limited in this respect to the "rules and working conditions" pertaining to admission to and removal from the craft and to the services then being performed by the members thereof. It eliminates dual representation as to all matters pertaining to a particular craft; it minimizes the opportunity for jurisdictional disputes between the crafts; and by the elimination thereof paramount controlling effect is given to the primary purpose of the Act—"avoiding interruption of commerce."

ARGUMENT.

I.

RESORT TO THE DECLARATORY JUDGMENT PROCEDURE IS APPROPRIATE IN THE CIRCUMSTANCES PRESENTED HERE.

The primary requirement for resort to the declaratory judgment procedure is that there be a case of "actual controversy." The "controversy" must be real, substantial, definite, concrete, appropriate for judicial determination between adverse legal interests, touching legal relations of the parties, and of such a nature that specific relief through a conclusive decree can be granted. It is not essential that the adjudication require payment of damages, or the award of process, or that an injunction be sought, or that it be shown that irreparable injury is threatened. *Aetna Life Insurance Company v. Haworth*, 300 U. S. 227.

Such a controversy exists in the instant case. As indicated in the Questions Presented, it is whether petitioner Engineers' Committee has the exclusive right under the Railway Labor Act collectively to bargain and contract with the Carrier concerning the rules governing entry into the craft of locomotive engineers and the performance of service by members of the engineers' craft, and whether the action of the Carrier in bargaining and contracting upon this subject with the Firemen's Committee was lawful.

This controversy appears from the pleadings. It was alleged in the first amended complaint (R. 26-33) and admitted in the Carrier's answer (R. 51), which then went on to state:

> "For further answer to said amended complaint and answer of Third Party Defendant, these defendants would respectfully show to the Court that the conditions described in plaintiff's petition have not only given rise to the controversy described in para-

graph 10 thereof, but for many years have been fruitful of controversy;" (R. 54.).

* * * * *

"That the continued existence of these controversies has and will continue to be a source of trouble, confusion and expense to defendants, and has and will continue to materially hamper defendants in the performance of their common carrier duties to the public, and defendants therefore join in the prayer of the plaintiff that the Court determine for the guidance of all parties the respective rights of the parties with respect to contracting for and performance of such services." (R. 59.)

The record shows that the dispute is real, definite and concrete. For many years the Engineers' Committee had in effect with the Carrier collective agreements covering the rules in question. Although the Firemen's Committee endeavored to have these rules changed by the Carrier and mediation was sought by both the Firemen's Committee (R. 172) and the Carrier (R. 172, Plaintiff's Exhibit 3, R. 174, 175-190), the Carrier at all times prior to entering into the Mediation Agreement here involved took the position that the rules in dispute were engineers' rules and that it could not negotiate with the firemen on the subject (Plaintiff's Exhibit 3, R. 174, 175-190). In 1940, just prior to the execution of the Mediation Agreement, a strike vote was taken and strike was authorized by the firemen's craft (R. 43, 58). When the Carrier yielded to the pressure of the threatened strike by the firemen and entered into the Mediation Agreement there was immediately a controversy between the Carrier and the Engineers' Committee. While as a result of the Mediation Agreement the Carrier cancelled the rules on the same matters theretofore agreed upon with the Engineers' Committee, such action is not the gravamen of the petitioner's complaint. Petitioner's objection was and is that the Carrier had no right to treat, bargain and contract with the Firemen's Committee

respecting the three rules involved in the Mediation Agreement, because this right was exclusively vested in the Engineers' Committee. Therefore, there was and is a real, definite and substantial controversy.

The legal interests of the parties respecting these matters were adverse. Petitioner's right exclusively to bargain and contract for the engineers' craft, hereinafter discussed, (*Virginian R. Co. v. System Federation No. 40*, 300 U. S. 515, 548) is a valuable property right (*Texas & N. O. R. Co. v. Brotherhood of Railway & Steamship Clerks*, 281 U. S. 548, 571). The claim of petitioner that its right of representation is exclusive is opposed to, and impossible of reconciliation with, the position taken by the Carrier as well as the position asserted by the Firemen's Committee in its answer (R. 37-48), and the interests of the parties are therefore clearly adverse.

The interpretation and construction of the provisions of the Railway Labor Act upon which petitioner's claims are based are appropriate subjects of declaratory relief. As Professor Borchard has observed,[1] the construction and interpretation of statutes and the question of their application to the plaintiff is a "common quest" of declaratory action. He adds that "The clarification of statutory rights, powers, privileges, and immunities is of growing importance in the solution of conflicts not only between the Government and the individual, in which relation the issue most frequently arises, but also between private individuals *inter se*, for legal relations are coming more and more under the control of statutory regulation. * * * Private persons have occasion to seek the construction or interpretation of statutes, because the statute appears to confer upon them some right or benefit, which is denied them, or to impose some burden, from the effects of which they consider themselves privileged or immune."

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[1] *Borchard, on Declaratory Judgments* (2nd ed.), pp. 788-9.

There is no reason to believe that the Federal Declaratory Judgments Act is less responsive to this purpose than the various state acts under which many declarations have been made concerning the interpretation and construction of statutes.[1] The Federal Act has been held to permit declarations interpreting and construing federal statutes as conferring rights upon private litigants.[2] And it is now settled that the Federal Act permits declarations as to the constitutionality and validity of federal statutes,[3] in which type of case it is often necessary to construe the meaning of the statute.

The remaining question appears to be whether or not the court should exercise its jurisdiction to make a declaration. (cf. *Brillhart v. Excess Ins. Co.*, 316 U. S. 491; *Great Lakes Dredge & Dock Co. v. Huffman*, ... U. S. ...., 87 L. ed. (Adv. Sheets) 1021, No. 849, October Term, 1942.).

It may be noted first that the instant case is dissimilar to the *Brillhart* case in that no companion suit in a state

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[1] The Uniform Declaratory Judgment Act (Sec. 2) provides that "Any person * * * whose rights, status, or other legal relations are affected by a statute * * * may have determined any question of construction * * * arising under the * * * statute * * * and obtain a declaration of rights, status, or other legal relations thereunder." The numerous cases wherein the interpretation of a statute has been the direct object of a declaratory action are gathered in *Borchard, op. cit.* pp. 789-790.

The Committee Note appended to Rule 57 of the proposed new Rules of Federal Procedure stated in part "Written instruments, including ordinances and statutes, may be construed before or after breach at the petition of a properly interested party, process being served on the private parties or public officials interested. In other respects the Uniform Declaratory Judgment Act affords a guide to the scope and function of the federal act." See also *Borchard, op. cit.* p. 313.

[2] *Bowie v. Gonzales*, 117 F. 2d 11 (C. C. A. 1) construing various provisions of the Fair Labor Standards Act; cf. *Lukens Steel Co. v. Perkins*, 107 F. 2d 627, App. D. C. (Rev'd 310 U. S. 113), construing the term "locality" as used in the provision of the Public Contracts Act of June 30, 1936.

[3] *Currin v. Wallace*, 306 U. S. 1.

court has been filed. As shown in our answer to Question 2 propounded by the court, there are no questions here of the construction of a contract which are governed by state law, and, because petitioner's cause of action is based upon the interpretation and effect of the Railway Labor Act, obviously it cannot be adjudicated authoritatively and finally by a state court since it would ultimately be subject to review by this Court. Accordingly, the reason which led the court to remand the *Brillhart* case does not exist here.

The *Great Lakes Dredge & Dock Co.* case (87 L. ed. at p. 1024) held that under the circumstances presented, jurisdiction under the Declaratory Judgments Act should be exercised in conformity with established equitable principles. In *Virginian R. Co. v. System Federation No. 40, supra*, this Court approved the exercise of equitable jurisdiction and the issuance of an injunction restraining the carrier from doing what is complained of here, i.e., from entering into any contract concerning the rules governing the craft in question with any representative other than the duly designated representative of such craft (300 U. S. at p. 540). This suggests that petitioner in the instant case might have sought an injunction rather than declaratory relief. We think the remedy of injunction would have been appropriate. However that may be, it would seem clear that the considerations which led the court to exercise jurisdiction and issue an injunction in the *Virginian R. Co.* case call for the exercise of jurisdiction to make a declaration here. These considerations in essence were that the Congress had provided in the Railway Labor Act a plan for collective bargaining designed to promote peaceful settlement of labor controversies, and that the carrier had refused to bargain in the manner prescribed, with consequent defeat of the statutory purpose. The same elements are presented here as compelling reasons for the exercise of jurisdiction.

The rule has been stated that the court should exercise its discretion to render a declaratory judgment "where it will serve a useful social purpose, and especially where it will terminate the controversy or settle the uncertainty giving rise thereto." *Borchard op. cit.* p. 313. In this connection the Senate Committee in its report upon the federal bill[1] said: "It [the declaratory judgment] declares conclusively and finally the rights of parties in litigations over a contested issue, a form of relief which often suffices to settle controversies and fully administer justice." These functions, we are confident, will be served by the declaration sought in the case at bar. The litigation already has served a useful purpose. Petitioner could have pursued the drastic course of calling a strike when the Mediation Agreement was made, or when the carrier subsequently abrogated petitioner's rules on the matter. Instead it sought by peaceable means to have decided by conclusive decree the extent of its right to negotiate and contract concerning the subjects in controversy. When this litigation is completed the dispute over the right to negotiate and agree upon the rules in question will be settled as between all of the parties. The obstacle to collective bargaining occasioned by the uncertainty of the meaning of the Railway Labor Act in this respect will be removed. It is not to be assumed that the declaration will be ineffectual, or that the parties will not give heed thereto, and that when the collective bargaining rights of the contending crafts have been defined and determined proper agreements cannot be reached. Cf. *Virginian R. Co.* case, p. 552. Nor can the fact be ignored that the Congress, in the Railway Labor Act, deliberately expressed its judgment that collective bargaining, according to the plan there laid down, will provide orderly settlement of railway labor disputes. *Idem.* p. 551.

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[1] Senate Report No. 1005, 73rd Cong., 2d Sess., p. 2.

II.

THIS CASE DOES NOT PRESENT ANY QUESTIONS OF CONSTRUCTION OF CONTRACTS, BUT ONLY THE QUESTION OF THE VALIDITY OF THE MEDIATION AGREEMENT UNDER THE RAILWAY LABOR ACT. THE FEDERAL LAW SHOULD BE APPLIED.

Although there were a number of contracts referred to in the pleadings, the Mediation Agreement is the only agreement concerning which declaration was made or is now sought in the case.

Fundamentally, the question of the *construction* of the Mediation Agreement is not involved here. The meaning of the Agreement is perfectly clear to the parties. They understand alike the language used therein. There is no dispute over what the Agreement covers or how it is to be applied if given effect. The controversy is over the question of its validity.[1] As heretofore pointed out, petitioner's claim of invalidity is that under the Railway Labor Act the Carrier had no right to negotiate with the Firemen's Committee on the subject, and the Agreement is therefore void.[2] The substantial question thus presented is that of the power and authority of the Carrier *ab initio* to negotiate on the subject, and not that of the meaning and effect of the Agreement as made.

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[1] The amended complaint prayed that the Mediation Agreement be declared "null and void and of no force and effect" (R. 34); the answer of the Firemen's Committee asked the court to declare said Agreement "valid and binding upon all parties to this cause" (R. 48); and the answer of the Carrier prayed that the court "determine for the guidance of all parties the respective rights of the parties with respect to contracting for and performance of such services as are hereinabove referred to" (R. 59).

[2] The Circuit Court of Appeals stated in its opinion (R. 297): "The Engineers' Committee * * * claimed for itself, as the bargaining representative of the engineers, the exclusive right to bargain with the railroad on the subject matter in dispute, and that its right has been denied by making the mediated agreement with the Firemen's Committee which therefore is void; and there being a present definite controversy thereabout, a declaration to the just stated effect is prayed."

The validity of the Mediation Agreement depends upon the construction and effect given to the Railway Labor Act. This clearly presents a question of Federal law.

Erie R. Co. v. Tompkins, 304 U. S. 64, does not require resort to state law here. Thus far this Court has not applied the doctrine of that case to any cases except those arising under diversity of citizenship. See *D'Oench, Duhme & Co. v. Federal Deposit Ins. Corp.*, 315 U. S. 447, 455, 467. Diversity is not shown in our case, the action being brought as one arising under a law regulating commerce, to wit, the Railway Labor Act.

The rule of the *Tompkins* case has been held by this Court to be inapplicable to cases involving the interpretation and application of Federal statutes, in which cases it is well settled that federal, not local, law applies. *Prudence Realization Corp. v. Geist*, 316 U. S. 89, 95, and cases there cited. *Baltimore & O. R. Co. v. Kneper*, 314 U. S. 44. And even though state law be involved to some extent in the process of decision, the *Tompkins* case is nevertheless inapplicable here because of the controlling effect of the federal statute upon the validity of the Mediation Agreement. See *Sola Electric Co. v. Jefferson Electric Co.*, 317 U. S. 173, 176, where it was said that the doctrine of the *Tompkins* case is "inapplicable to those areas of judicial decision within which the policy of the law is so dominated by the sweep of federal statutes that legal relations which they affect must be deemed governed by federal law having its source in those statutes, rather than by local law."

Where, as here, the validity of a contract is challenged on the ground that a Federal statute incapacitates the parties from making it, the existence and effect of the contract and the extent of its obligation become federal questions and finality cannot be accorded the views of a state court. Cf. *Awotin v. Atlas Exchange Bank*, 295 U. S. 209; *Irving Trust Co. v. Day*, 314 U. S. 556, 561; *Standard Oil Co. v. Johnson*, 316 U. S. 481, 483. Under such circumstances it

would be both inappropriate and inexpedient for Federal courts to search out and apply decisions of state courts. The result might well be that a different decision would be reached in each state in which the validity or effect of a railroad collective bargaining agreement is challenged. It could end in such confusion of the rights of the employees and management of an interstate carrier as to materially hamper or virtually destroy carrier-wide collective bargaining as now practiced.

There is, moreover, no body of state law, either statutory or common law, which is dispositive of our case. Indeed, since the validity of the Mediation Agreement is to be determined by the application of the federal statute, there is no opportunity for the play of local law upon the point in controversy. In any event, there are no applicable statutes or decisions of Texas courts which bear on the matter.

III.

THE NORRIS-LaGUARDIA ACT DOES NOT NEGATIVE THE PROPRIETY OF GRANTING THE RELIEF SOUGHT.

The Norris-LaGuardia Act (29 U. S. C. §§ 101-115) limits in specified instances and circumstances the jurisdiction of Federal courts to grant injunctions in labor disputes. It also declares the public policy of the United States applicable to the interpretation of the Act and the jurisdiction and authority of Federal courts, as such jurisdiction and authority are therein defined and limited.

The first answer we make to the court's question is that since petitioner has not sought an injunction, the Norris-LaGuardia Act has no application to the relief here sought.

In addition we believe that neither the immunity from injunction established by that Act nor the public policy declared therein has the effect of depriving the court of jurisdiction to grant a declaratory judgment here.

For the purpose of this discussion, we may assume that a "labor dispute" within the meaning of the Act is shown.

Section 4[1] enumerates certain acts which are immunized from injunction.[2] Bearing in mind the maxim that a legislative affirmative description implies denial of non-described powers (*Continental Casualty Co. v. United States*, 314 U. S. 527, 533) and the rule that in the absence of a general grant of statutory power the detail in which particular powers have been specified precludes their extension to other subjects (*Peoria Ry. Co. v. United States*, 263 U. S. 528, 534-535), there appears to be no basis for a holding that an injunction cannot be granted with respect to any acts not designated in § 4. It is immediately apparent that § 4 does not prohibit an injunction to restrain an employer from negotiating or contracting with a representative other than the true one, for such bargaining is clearly not within the category of acts specified in § 4. *A fortiori*, a declaration of the illegality of such act is not prohibited thereby.

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[1] Section 4 in substance provides that no court of the United States shall have jurisdiction to issue an injunction in a labor dispute prohibiting any interested person from doing any of the following acts: (a) ceasing to work or to remain in any relation of employment; (b) becoming or remaining a member of any labor or employer organization; (c) paying to or withholding from any person participating or interested in a labor dispute certain benefits; (d) aiding persons during pendency of suit; (e) giving publicity to facts involved in the dispute by a method not involving fraud or violence; (f) peaceably assembling or organizing; (g) communicating intentions to do any of the above acts; (h) agreeing to do any of the above acts; and (i) urging any of said acts to be done.

[2] Section 5, in providing that no Federal court shall have jurisdiction to issue an injunction on the ground that any interested person is engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in § 4, may also be said to immunize from injunction such combinations or conspiracies. Section 3 declares "yellow dog" contracts to be unenforceable and not to afford any basis for granting equitable relief. These sections, however, are not relevant here.

The public policy declared in § 2 includes the statement that "it is necessary that he (the worker) have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference * * * of employers * * * in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining * * *." The policy thus declared is consistent with the declaration sought by petitioner, not contrary to it.

The purpose of the Act is to protect labor from interference by injunction in respect of designated activities which Congress considers should be free of such restraint, and to throw certain procedural safeguards around the issuance of injunctions respecting activities not thus immunized. An immediate object was to extend and make definite the provisions of the Clayton Act and to obviate the results of the judicial construction given that Act. *United States v. Hutcheson*, 312 U. S. 219, 234-236; *Milk Wagon Drivers' Union v. Lake Valley Farm Products*, 311 U. S. 91, 101-102; *New Negro Alliance v. Sanitary Grocery Co.*, 303 U. S. 552, 562. The report of the Senate Committee on the bill states:[1]

> "The primary object of the proposed legislation is to protect labor in the lawful and effective exercise of its conceded rights—to protect, first, the right of free association and, second, the right to advance the lawful object of association."

This report, after discussing the rights belonging to labor, and referring to the right of labor to organize for the purpose of securing agreements respecting rates of pay and conditions of work, as stated in *Texas & N. O. R. Co. v. Ry. Clerks*, 281 U. S., at p. 570, declares:

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[1] Senate Report No. 163, 72nd Cong., 1st Sess., p. 10.

"It would be hypocrisy, however, to concede these rights to labor and then to prohibit any effective exercise of these rights by labor."

We submit that it would defeat the underlying purpose of the Norris-LaGuardia Act to construe the Act so as to prevent the issuance of an injunction or the entry of a declaration to secure to employees the full and complete enjoyment of their right exclusively to negotiate a collective agreement through their duly designated representative. As a practical matter, employees could be deprived of this right if the courts were prohibited from enjoining or declaring unlawful the act of an employer in treating with a false representative.

It is significant that the acts detailed in § 4 which are protected against interference by injunction—with exceptions not applicable to a case such as ours[1]—are the activities of labor unions or their members and not of employers. The declaration of policy contained in § 2 is drawn exclusively in terms of employee rights. So far as we are aware, the Act has never been applied to prohibit an injunction to restrain an employer from violating statutory requirements in collective bargaining. On the other hand, it has been construed by this Court to permit such injunctions. *Virginian R. Co. v. System Federation No. 40, supra*, pp. 540, 563.

While it may be considered that the issuance of an injunction in a case such as ours would be subject to the safeguards provided in § 7, since an injunction is not sought here it seems unnecessary under the issues presented to discuss compliance with those requirements. It may be

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[1] Certain of the acts enumerated in § 4 relate, or appear to be applicable, to activities of employers, as, for example, "Becoming or remaining a member • • • of any employer organization" [sub par. (b)]; and "withholding • • • unemployment benefits or insurance • • •" [sub par. (c)].

pointed out, however, that these requirements were considered in the *Virginian R. Co.* case, and found not to prevent the issuance of the injunction there granted. 300 U. S. at p. 563.

Finally, any apparent impediment found in the Norris-LaGuardia Act to the granting of the relief here sought appears to be removed by application of the principles that special statutes prevail over general ones (*State of Missouri v. Ross*, 299 U. S., 72, 76) and that a later statute will be deemed to supersede inconsistent provisions of an earlier statute (*United States v. California*, 297 U. S. 175, 188). The Norris-LaGuardia Act was enacted in 1932, and the amended Railway Labor Act and the Declaratory Judgments Act were enacted in 1934. As held in the *Virginian R. Co.* case (300 U. S. at p. 563) the provisions of the Railway Labor Act may not be rendered nugatory by the earlier provisions of the Norris-LaGuardia Act. It is also clear that the power of courts under Federal Declaratory Judgments Act to issue declaratory decrees not containing injunctions is not affected or limited by the earlier Norris-LaGuardia Act. This is particularly true when it is borne in mind that the Norris-LaGuardia Act is not intended to render unavailable any remedies in Federal courts other than injunctions. Frankfurter and Greene, *The Labor Injunction*, p. 220.

IV.

THE RIGHT OF CRAFT REPRESENTATION IS EXCLUSIVE IN THE DESIGNATED REPRESENTATIVE OF THE CRAFT.

Section 2, Fourth, of the Railway Labor Act (45 U. S. C. § 152) provides that "Employees shall have the right to organize and bargain collectively through representatives of their own choosing," and that "The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act." Section 2, First and Ninth, of the Act imposes the obligation on a carrier to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions, and to treat with the designated representative of the craft for the purposes of the Act. This duty to treat with the designated representative is a duty to treat exclusively with such representative.

In *Virginian R. Co. v. System Federation No. 40, et al.*, 300 U. S. 515, 548, this Court, in construing the Railway Labor Act, held that the provisions of the Act giving to the employees the right to organize and to bargain collectively through the representative chosen by a majority of the craft gave an exclusive right to the craft representative so designated. The Act, said the court, imposed upon the carrier "the affirmative duty to treat only with the true representative, and hence the negative duty to treat with no other."

Respondents may contend, as was done in the Circuit Court of Appeals, that the Act imposes the duty on the Carrier to treat only with the true representative of the group asserting a claim, and hence only the negative duty to treat with no other person falsely claiming to be the true representative of such group, and that since the Firemen's Committee is admittedly the true representative of the firemen's craft the Act imposed upon the Carrier the

duty to treat with the Firemen's Committee when it was asserting a claim concerning rules and conditions governing the craft of locomotive engineers. Such argument apparently is that a "false representative" of the engineers' craft must be one who is claiming without warrant to be the representative of the engineers' craft; and that, although the Act prohibits the Carrier from dealing with such "false representative," if the false representative be the designated bargaining agent of some other craft seeking to invade the field of the engineers' craft, it is perfectly proper for the Carrier to deal with such representative on matters concerning the engineers' craft. Petitioner believes and contends that under the statute and the opinion in the *Virginian R. Co.* case, *supra*, as applied to the instant case, it is and was the duty of the Carrier to treat only with the Engineers' Committee as the true and only representative of the engineers' craft in all matters concerning rates, rules and working conditions governing the craft of locomotive engineers on the Carrier's railroad; and that it is and was the duty of the Carrier not to treat with any other person or group of persons concerning such matters, regardless of whether such person or persons were the representatives of a minority of the craft of engineers and admittedly interested, or the representative of the firemen's craft claiming to be interested in the matters affecting the engineers' craft, or admitted interlopers, as none of such parties would be the representative of the engineers' craft. In other words, there can be no true representative of the craft or class of locomotive engineers which has the right to negotiate with the carrier on any matters concerning rates of pay, rules and working conditions of the engineers' craft unless that representative is the duly designated representative of the engineers' craft chosen by a majority of that craft. We submit that such is the meaning and effect of the term "true representative" as used in the *Virginian R. Co.* case, *supra*. At page 548 of

the opinion the court approves[1] and quotes from the brief of the Government as follows:

> "When the majority of a craft or class has (either by secret ballot or otherwise) selected a representative, the carrier cannot make *with anyone other than the representative* a collective contract (i.e., a contract which sets rates of pay, rules, or working conditions), *whether the contract covers the class as a whole or a part thereof.* * * *
>
> If the majority of a craft or class has not selected a representative, the carrier is free to make with anyone it pleases and for any group it pleases contracts establishing rates of pay, rules, or working conditions." (Italics ours.)

There are admittedly two separate crafts or classes employed in engine service by the Carrier. There is the craft or class of locomotive engineers, which has been recognized by the Carrier as a separate craft or class of employees for all purposes of the Railway Labor Act (R. 21, 49), and the Engineers' Committee is the sole designated representative of said craft or class (R. 22, 46, 50). There is a separate craft or class of locomotive firemen employed by the Carrier (R. 25, 39, 50), and the Firemen's Committee is the designated representative of said craft or class (R. 26, 39, 50). The Firemen's Committee is not, and never has been, the representative of said craft or class of locomotive engineers on Carrier's railroad (R. 26, 50).

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[1] "We think, as the Government concedes in its brief, that the injunction against petitioner's entering into any contract concerning rules, rates of pay and working conditions, except with respondent, is designed only to prevent collective bargaining with anyone purporting to represent employees, other than respondent, who has been ascertained to be their true representative. When read in its context it must be taken to prohibit the negotiation of labor contracts, generally applicable to employees in the mechanical department, with any representative other than respondent, but not as precluding such individual contracts as petitioner may elect to make directly with individual employees."

The Engineers' Committee contends that as the duly designated representative of said craft or class of locomotive engineers employed on the Carrier's railroad, and in accordance with the pronouncement of this Court in the *Virginian R. Co.* case as above set forth, it has the exclusive right to negotiate with the Carrier, and the Carrier has the duty to negotiate exclusively with it, as to the rules and working conditions governing said craft or class of locomotive engineers employed on said railroad, including all the rules which pertain to and govern entry into, remaining in, or removal from said craft, or which pertain to services to be performed as locomotive engineers by the members of said craft.

The holding in the *Virginian R. Co.* case above set out negatives any contention that there should or could be dual craft representation respecting the subjects covered by the Mediation Agreement which, as hereinafter discussed, are concerned solely with the rules and working conditions of the craft of locomotive engineers as such.

The decision in the *Virginian R. Co.* case gives paramount consideration to the express purposes of the Railway Labor Act. Among the purposes clearly expressed therein (Section 2 of the Act, 45 U. S. C. 152, General Purposes) are the following:

> "(1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; * * *
>
> (4) To provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions. * * *"

The obligation of the Carrier under Section 2, Ninth, to treat with the representative of the craft or class "for the purposes of the Act" is to accomplish the "orderly settlement" of disputes concerning rates of pay, rules or working conditions of the craft and thereby "avoid any interruption to commerce." The construction placed on the

Act in the decision in the *Virginian R. Co.* case makes effective and realistic the express purposes desired to be reached by Congress. If the right of craft representation as to rates, rules and working conditions were not exclusively vested in the designated representative of a majority of each craft, instead of the Act facilitating the orderly settlement of disputes it would prevent such settlement and produce utter disorder and discontent. This, we submit, is well illustrated by the holding of the Circuit Court of Appeals in this case.

The Circuit Court of Appeals, although holding that the Railway Labor Act gives the right to the Engineers' Committee, as the representative chosen by the majority of the engineers' craft, to represent the whole craft, and that such right is exclusive as against anyone else seeking to represent the engineers' craft (R. 298), nevertheless decreed that the Engineers' Committee has not the exclusive right to confer and agree with the Carrier about the rules in issue here (R. 301). Although declaring (R. 301) that the Mediation Agreement was not binding upon the craft of engineers,[1] the Circuit Court of Appeals decreed that said Agreement was not illegal or void. The effect of this holding is to sanction the right of the Carrier to bargain with the Firemen's Committee concerning engineers' rules and to permit the agreement concerning engineers' rules, negotiated between the Firemen's Committee and the Carrier, to remain in effect. Thus, says the Circuit Court of Appeals in effect, an agreement made by the firemen's craft representative with the Carrier, concerning rules and working conditions of the craft of locomotive engineers, is not invalid or illegal or void, and hence is

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[1] In its opinion the Circuit Court of Appeals said (R. 299): "We cannot say the agreement [Mediation Agreement] thus reached violated any law and is void, but it is incomplete. The engineers are not bound by it, and the carrier is not protected against the discontent of the engineers, and the peace of transportation is not secured."

valid and effective, although it is incomplete and not binding on the craft of engineers. This holding is a contradiction in thought and legal effect. Since, as the court held, the Agreement is not binding upon the engineers' craft, the decree should have declared it to be invalid, certainly in so far as it governed engineers.

Under the pronouncement of the Circuit Court of Appeals there still remains, and this case presents for determination, the question of how far the exclusive right of collective bargaining by the duly designated representative of the craft extends. In other words, concerning what rules and working conditions, as such terms are used in the Act, does each designated representative of a craft have the exclusive right collectively to treat, bargain and contract with the Carrier? No decision has construed or defined such terms, but this Court clearly indicates in the *Virginian R. Co.* case, *supra*, that the scope thereof should be limited with respect to each craft, for the court therein (p. 549) holds that the injunction issued in that case conforms to the requirements of Section 2 of the Act, in that "it must be taken to prohibit the negotiation of labor contracts, *generally applicable* to employees in the mechanical department, with any representative other than" the duly designated craft representative. (Italics ours.)

V.

EXCLUSIVE REPRESENTATION OF THE CRAFT EXTENDS TO THE NEGOTIATION OF AND CONTRACTING FOR ALL RULES AND WORKING CONDITIONS GOVERNING ADMISSION TO OR REMOVAL FROM THE CRAFT AND GOVERNING SERVICES PERFORMED BY THOSE EMPLOYED IN THE CRAFT.

The reasons which support and justify the holding that the right of majority craft representation is exclusive are equally persuasive that it was the intent of Congress in enacting the Railway Labor Act to restrict the "rules and working conditions" concerning which the craft,

through its representative, has the right to contract. If the designated representative of each particular craft does not have the exclusive right to bargain with the Carrier within definable limits, and if the jurisdiction of a craft within which the exclusive right may be exercised is not limited, then disputes between various crafts will result in defeating the express purposes of the Act. It is a matter of common knowledge that for many years industrial strife has often been occasioned by jurisdictional disputes between labor organizations when one labor organization representing those employed in a particular craft seeks to overreach into a field of work occupied by another craft represented by another labor organization. Such cases illustrate the necessity, in the interest of industrial peace, of confining the collective bargaining right in each craft to subjects appropriately within its jurisdiction, for whenever two crafts seek to control a particular type of work, regardless of which of the crafts should properly control that work, industrial strife is sure to follow. Dual representation of craft matters, i.e., negotiation by the representatives of two separate crafts of matters properly belonging to one of the crafts, as well as dual representation within a craft, that is, by a majority and minority craft representative, is impractical, unfeasible, and will inevitably lead to disputes and strikes. Dual representation of any kind will render the Act ineffective. When Congress adopted the 1934 amendments of the Railway Labor Act and established majority rule for crafts for the purposes of the Act, we submit dual representation of all kinds was eliminated from railroad labor relations. Such, we believe, is the effect of the Act as applied in *Virginian R. Co.* case as pointed out under Point IV hereof.

With attention focused on the purposes of the Act, and with the foregoing considerations in mind, it is necessary, in view of the controversy herein, that the term

"rules and working conditions" as used in the Act, and the extent to which the exclusive right of representation applies thereto, be construed and defined. Petitioner contends that whether a rule or working condition is a proper matter for exclusive collective bargaining by the engineers' craft should be determined by a consideration of whether such rules or working conditions govern that craft and the services to be performed therein. As applied to this case, pertinent matters to be considered in that connection are such as the following: Is the rule one which governs the employee while engaged in performing services as an engineer? Is the rule one which relates to the amount of work which may be performed by an engineer? Is the rule one which relates to the number of persons who at a particular time may be permitted or required to work as engineers? Is the rule one which governs admission to the craft or removal from the craft? Crystallized into affirmative form, the rule could be stated thus: The exclusive right of the duly designated representative of a craft to bargain collectively extends to such rules and working conditions as pertain to entry into or removal from the craft and to the services to be performed by members of such craft.

The Circuit Court of Appeals for the Ninth Circuit in the case of *General Committee of Adjustment of the Brotherhood of Locomotive Engineers for Pacific Lines of Southern Pacific Company v. Southern Pacific Company, et al.*, 132 F. 2d 194, which case is under review by this Court in Nos. 27 and 41, October Term 1943, in a fact situation substantially the same as here presented, has correctly stated, we submit, the proper construction of the Railway Labor Act in its application to the situation presented in the case at bar. In that case, as here, the controversy was over the right of the engineers' craft representative to negotiate and contract exclusively concerning rules governing the engineers' craft, including entry of

engineers into the craft and removal of engineers from the craft.[1] That court there stated (132 F. 2d 205):

> "It is our opinion that the [Railway Labor] Act contemplates that the cleavage of the powers of the firemen's and engineer's crafts to agree with the employer is at the point of imposing conditions of entry into the one craft or the other."

That construction of the Act results in an understandable, clear-cut, workable rule. It places the dividing line at the point of "entry," from which it would necessarily follow that all rules governing the craft, or the performance of service within the craft, at and above the point of entry thereto, and, likewise, at and above the point of leaving the craft, are within the exclusive jurisdiction of the engineers' craft representative.

Such construction accords fully with the decision of this Court in the *Virginian R. Co.* case. It recognizes the right of the representative of the engineers' craft to make all the rules governing the craft or the members thereof in every particular where the rules governing the craft as a craft are involved. It recognizes the right of the craft representative to negotiate exclusively for the rules which govern admission to the craft, remaining in the craft, and leaving the craft, and hence the exclusive right to negotiate the rules governing performance of services by those who

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[1] The Ninth Circuit Court of Appeals applied this line of demarcation to the Questions and Answers of Firemen's Article 37, Section 15, in decreeing that the Questions and Answers are valid only in so far as they relate to the rights of firemen as such, and that they are invalid in so far as they relate to the entry of firemen into the craft of engineers (132 F. 2d at 206). It likewise was applied to Article 43 of the Firemen's agreement by limiting the application of said article "to conditions under which demoted engineers enter, remain in, and leave the firemen's craft," and held that this article was invalid in so far as its provisions sought to prescribe conditions of re-entry into the engineers' craft or to regulate the mileage of engineers or the number of engineers to be assigned to the engineers' working lists (132 F. 2d at 205).

are members of the craft. It likewise recognizes the right of the representative of the firemen's craft to negotiate and contract similarly concerning the firemen's craft.

In contrast thereto, the decision of the Fifth Circuit Court of Appeals in the instant case holds that the matter of entry of engineers into the engineers' craft from employment in the firemen's craft is a matter of "concern" of the firemen's craft, and that the matter of entry into the firemen's craft from employment in the engineers' craft is the "concern" of the engineers' craft; by reason whereof the Engineers' Committee does not have the exclusive right under the Act to confer and agree with the Carrier upon the rules governing entry into or removal from the engineers' craft. Likewise, under this holding, the Firemen's Committee does not have the exclusive right to confer and agree with the Carrier upon the rules governing entry into or removal from the firemen's craft.

The construction of the Act as announced in the *Southern Pacific* case, *supra*, gives the exclusive control of the rules governing the engineers' craft to the engineers' craft representative. The construction of the Act announced by the Fifth Circuit Court of Appeals in the instant case gives at least equal control of the rules governing the engineers' craft, as set out in the Mediation Agreement, to the firemen's craft representative. If the Engineers' Committee does not have the exclusive right to make the rules determining when and whether an emergency engineer is needed, when men are to be added to the working lists of engineers, when men are to be removed from the working lists of engineers, and what engineer, holding seniority as such under seniority rules agreed upon between the Carrier and the engineers' craft representative, is to be called for service as an emergency engineer, but such matters are also for negotiation and contracting by the Firemen's Committee, then the designation of a representative of the engineers' craft by a majority of that

craft which shall be the representative of the craft for the purposes of the Railway Labor Act, has become a designation of dubious purpose and value.

As indicated above, the construction here urged by petitioner would provide an understandable and workable rule. It would define the rights of each craft, could be readily applied without further judicial interpretation, would minimize jurisdictional disputes with the resulting ill will between craft and craft, and carrier and crafts, and accomplish the purposes of the Act. Such a construction is fair, just and equitable to each craft. No craft would thereby have justifiable cause for complaint, as it would be permitted thereunder to bargain collectively as to all matters pertaining to craft membership and the labor *then being performed* by its members. No craft, nor representative thereof, should desire or be permitted to contract concerning the service then being performed by another craft, or to set the terms of admission to or removal from such craft, as was done in this case, thereby usurping the functions of such other craft and denying to the members thereof true representation through their designated bargaining agent.

VI.

THE SUBJECT MATTER OF THE MEDIATION AGREEMENT IS CONCERNED ONLY WITH RULES GOVERNING THE ENGINEERS' CRAFT.

On October 1, 1918, an agreement known as Engineers' Schedule was entered into between the Carrier and the Engineers' Committee (Plaintiff's Exhibit 1, R. 96, 97-104) concerning rates of pay, rules and working conditions governing the engineers' craft, including, among others, the rule governing mileage regulations (Art. 44, R. 102-104), and the rule providing that engineers in pool service shall run first in first out (Art. 10, R. 97-8). The schedule recognized the Engineers' Committee as having the general power and authority "to make and interpret contracts, rules, rates and working agreements for locomotive engineers" (Art. 38, R. 99). The Engineers' Committee, as the recognized representative of the engineers' craft, has from time to time entered into agreements with the Carrier respecting additional rules or working conditions or respecting modifications or interpretations of existing rules. Among such are the various agreements set forth in the statement herein dealing with the calling of demoted engineers to particular service as emergency engineer, the regulation of the engineers' working lists, and the filling of vacancies in engineers' pool service at Smithville, Texas when the engineers' extra board was exhausted.

1. Item 1 of the Mediation Agreement purports to control the designation of demoted engineers to be called for service as emergency engineers.

On December 14, 1938 and May 1, 1939, the Engineers' Committee entered into agreements (Plaintiff's Exhibits 2-I, 2-J, R. 108, 116-8, quoted in the Statement herein, at p. 6, *ante*) which provided, in substance, that when an engineer could not be secured from the engineers' extra board and the use of an emergency engineer would be

necessary, the senior available demoted engineer, having his home terminal at the point where the emergency service was required or required to begin, should be used, unless such senior available demoted engineer was junior in engineers' seniority to the fireman (demoted engineer) then engaged in firing the engine on the assignment at such point (which was away from the latter's home terminal) in which event such fireman should be used as engineer on the remainder of the trip.

The practical operation of these agreements can best be explained by illustration: A, an engineer with ten years seniority as such, and B, a demoted engineer with six years seniority as engineer, are assigned as engineer and fireman, respectively, on a run from Denison, Texas, to Waco, Texas, on the Carrier's railroad. Both have home terminals at Denison. Upon arrival at an intermediate point, such as Dallas, A becomes ill and is required to "lay off." C, D and E, employees of the Carrier, with engineers' seniority, are in Dallas at the time. C has nine years seniority as engineer, and his home terminal is in Denison. D has eight years seniority as engineer, and his home terminal is in Dallas. E has five years seniority as engineer, and his home terminal is in Dallas. Although C is available and is the senior engineer, he would not be called, because Dallas is not his home terminal. D, if available, would be called to complete the run, as he is the senior available engineer with home terminal at Dallas. If D were unavailable, B, the fireman (demoted engineer) then engaged in operating the engine on the assignment in question, would be used as engineer, as he is senior to E.

Item 1 of the Mediation Agreement of December 12, 1940 (R. 27) changes the agreements of December 14, 1938 and May 1, 1939 in their entirety, so that, in all instances, the senior available demoted engineer will be called to perform the emergency service regardless of whether his home terminal is located at the point where the service is

required or required to begin. Thus, in the illustration above set forth, C would be called, if available; if unavailable, D would be called. If both C and D were unavailable E would be called, because B would be considered unavailable, as he is engaged in "firing" on an assigned run. In the latter instance the employee with the lesser engineers' seniority would be the engineer, and the employee with the greater engineers' seniority would be the fireman.

It is immediately obvious that the only services involved, in both the rule as contained in the agreement of December 14, 1938 and May 1, 1939, and the rule as contained in Item 1 of the Mediation Agreement, are those of engineers. These agreements do not in any wise concern the performance of any services as fireman or the performance of any services under rules governing the working conditions of the firemen's craft. They call for an exercise of engineers' seniority, a matter for regulation only by the engineers' craft and the Carrier.

2. Item 3 of the Mediation Agreement purports to determine the question of whether and when the use of an emergency engineer is necessary. It purports to prevent the use in engineers' service of an engineer regularly employed on the engineers' working list and to require the designation of an emergency engineer.

Another agreement entered into between the Engineers' Committee and the Carrier on May 14, 1929 (Plaintiff's Exhibit 2-M, R. 108, 121, quoted in the Statement herein, at p. 11, *ante*) provided, in substance, with reference to engineers' pool through freight service, that when the engineer on the pool board who was "first out" and who ordinarily would have been assigned to the next freight run, "lays off," and no extra engineer is available, instead of using a demoted or "emergency" engineer to fill this vacancy, the next engineer in order on the engineers' pool board who thus moved up to the position of

"first out" from the position of second out, would be used. For example: Suppose there are ten engineers on the pool through freight board and all of them are out on runs except engineers A, B and C, and under the "first in first out" rule they are listed on the pool board for the next assignment in the following order: A, first; B, second; C, third. A is called for an assignment but is ill and compelled to lay off. B is thus moved up to the first position as first out. No extra engineers are available. Instead of calling, as an emergency engineer, the senior demoted engineer who would have been called, as provided in the agreements of December 14, 1938 and May 1, 1939, aforesaid,[1] under the agreement of May 14, 1929, B, the next in order on the pool board and the man then first out, would be assigned to fill the vacancy. Item 3 of the Mediation Agreement is in direct conflict with the agreement of May 14, 1929 between the Engineers' Committee and the Carrier, and places in effect the rule set forth in Item 1 of the Mediation Agreement, so that, instead of B being assigned under the circumstances set forth above, the senior available demoted engineer, without reference to the location of his home terminal, would be called to fill the vacancy. As hereinbefore stated, this rule was an exception to the rule governing the use of emergency engineers as provided in the agreements aforementioned of December 14, 1938 and May 1, 1939, and was in effect at only one point on the Carrier's railroad, namely, on the Smithville, Texas, district. There was a special reason for having this exception to the general rule in effect at this point, as explained by the General Chairman, which was that there were so many regular engineers laying off at times when extra engineers were not available, resulting in the calling of emergency engineers, the regularly assigned engineers on the pool board were not making even the minimum mileage per-

[1] Referred to at p. 52, *supra*.

mitted by the schedule agreement; and it was found that, if all permissible mileage was worked by the assigned engineers, the working list could be maintained, or, in some instances, if the maximum mileage should be exceeded thereby, the list could be increased by the addition of another man (R. 146-7). Moreover, as the General Chairman further testified, it was a "literal application of the 'first in first out' rule" (R. 157). It is of particular significance that in making this agreement concerning the engineers to be used at Smithville, the Carrier and the Engineers' Committee had simply determined the question of whether it was necessary to call an emergency engineer from the ranks of demoted engineers, and had agreed that under the circumstances the calling of an emergency engineer was not necessary, as the work could be performed by an engineer regularly assigned to the engineers' working lists.

Item 3 of the Mediation Agreement is a glaring example of interference by the firemen's craft in a matter that is of no concern to anyone but engineers—a plain case of interloping. Why should a representative of the firemen's craft be permitted to have anything to say on the question of whether it is necessary to call an emergency engineer? Under rules and regulations in force, engineers working on the engineers' working lists are permitted to make mileage per month between minimum and maximum limitations (Plaintiff's Exhibit 1, Art. 44, R. 102-3), and although there was abundant reason for the Engineers' Committee to negotiate its rule for setting up the next pool engineer to enable the engineers regularly assigned to the pool to make the permissible mileage, this rule was swept away by Item 3 of the Mediation Agreement, which requires that an emergency engineer must be called to fill the vacancy regardless of whether or not the assigned engineers are making the mileage they are entitled to. Under the rules in force, neither the Firemen's Committee nor any man who was back firing could have any cause for com-

plaint for the rule at Smithville, unless the maximum mileage limitations of engineers were being exceeded, and, of course, even in such case they would not have the right to negotiate a new rule on the subject. One of the results of the application of Item 3 of the Mediation Agreement may well be that in the course of a month pool engineers would not make as much mileage as they were entitled to make under the mileage regulations and some of them might even go below the minimum. But irrespective of how individual engineers may be affected thereby, the net effect of Item 3 of the Mediation Agreement is that the firemen's craft representative by entering into this rule with the Carrier is regulating and controlling the mileage to be made by those in the engineers' craft. We submit that this is a matter with which the firemen's craft has no legal right or concern but is solely and exclusively for negotiation between the engineers' craft representative and the Carrier.

3. Item 2 of the Mediation Agreement purports to control the regulation of the working lists of engineers.

Item 2 of the Mediation Agreement places in effect an earlier agreement between the Engineers' Committee and other craft representatives and the Carrier entered into by letters of March 28 and March 29, 1923 (R. 29-31, quoted in Statement herein, pp. 8, 9, *ante*), which provides, in substance (as applicable to engineers), that the working lists of engineers will be handled by the Carrier's Superintendent under existing rulings and agreements, and that if conflicts should exist they would be worked out by conferences between the Carrier and the General Chairman of the Engineers' Committee. Engineers, in the performance of their services as such, are assigned to working lists, the number of men on the respective lists being controlled by the mileage limitations for the engineers' craft contained in Article 44 of the Engineers' Schedule (Plaintiff's Exhibit 1, R. 96, 102-104) and the fluctuation

in the Carrier's business. On the 1st and 15th of each month, or as soon thereafter as practicable, the mileage checks are examined and this and existing and anticipated future operations of the Carrier determine whether or not engineers will be added to the engineers' working lists or taken therefrom or whether no change need be made, so that the minimum mileage limitations provided for in the schedule can be obtained by the engineers on the working lists or the maximum mileage limitations shall not be exceeded (R. 147, 149). These working lists control the number of employees who will perform service as engineers. The firemen have their own separate working lists and do not appear on the lists of engineers (R. 142, 148). It is the contention of the petitioner that adding an engineer to or removing an engineer from the engineers' working lists is a matter exclusively within the jurisdiction of the engineers' craft. Likewise, adding demoted engineers to or removing such engineers from the firemen's working list is a matter exclusively within the jurisdiction of the firemen's craft. This must necessarily be so, because men are selected from the engineers' working lists to run engines, that is, to perform services as engineers, while men are selected from the firemen's list to fire engines, that is, to perform services as firemen. The handling of the working lists is one of the most important functions performed by the engineers' craft representative, because such regulation determines the monthly mileage that can be made by the members of the craft and thus the amount of their earnings.

Item 2 of the Mediation Agreement was not followed by a request of the Carrier for a change or modification of the agreement entered into between the representatives of the four organizations and the Carrier under dates of March 28 and March 29, 1923, as above set forth (R. 29-31), but was followed by a changed application of the latter agreement, in that the Carrier is now requiring concur-

rence of the Firemen's Committee in the regulation of the engineers' working lists. This is contrary to the intention of the 1923 agreement and contrary to all applications which followed the making of that agreement in so far as the engineers were concerned, because there had been no joint handling of engineers' working lists between the representative of the engineers' and firemen's crafts either before or after the making of the 1923 agreement. The undisputed testimony of the General Chairman of the Engineers' Committee is that, so far as the engineers were concerned, the lists were to be handled in accordance with the agreement then in effect between the Carrier and the Engineers' Committee (R. 168-9, Plaintiff's Exhibit 2-P, 2-Q, R. 108, 126-128.) It is to be noted that no agreement between the Engineers' Committee and the Carrier has ever provided for the joint handling of the working lists of engineers by the Engineers' Committee and the Firemen's Committee. The further undisputed testimony of the General Chairman on this matter is that prior to the 1923 agreement the local chairman of the Engineers' Committee handled the regulation of the engineers' working lists, and that after that agreement the Carrier handled the lists, through the co-operation of the local chairman of each organization, without joint handling between the Engineers' and Firemen's Committees, that is, so far as engineers were concerned, the regulation of the engineers' working lists was handled by the Carrier through the co-operation of the local chairman of the Engineers' Committee; that there had never been any agreement between the Carrier and the Engineers' Committee for the Carrier to discontinue handling the regulation of the working lists but that the handling thereof had drifted from the Carrier to the local chairmen of the organizations, each local chairman handling his own list (R. 157-9), that is, the engineers' local chairman handling the engineers' list, and the firemen's local chairman handling the firemen's list.

The effect, therefore, of Item 2 of the Mediation Agreement, so far as engineers are concerned, has been either a violation of the 1923 agreement with respect to the regulation of the engineers' working lists, or a modification of the practice concerning such regulation in effect between the Carrier and the Engineers' Committee, or both, and the least that could be said with respect to the effect of Item 2 of the Mediation Agreement is that it changed an existing practice, concurred in between the Carrier and the Engineers' Committee. The changing of a practice in the regulation of the engineers' working lists which had been agreed upon, whether expressly or by acquiescence, between the Carrier and the Engineers' Committee, we submit, is not a matter for collective bargaining by the firemen's craft representative; but is a matter for collective bargaining solely between the Carrier and the Engineers' Committee.

No sound reason can be advanced, we believe, for permitting the representative of the firemen's craft to have a voice in the regulation of engineers' working lists which are governed by rules concerning minimum and maximum limitations in the engineers' craft agreement with the Carrier. If concurrence of the firemen's craft representative is required in the regulation of the engineers' working lists, it is not only conceivable but probable, and undoubtedly actual, that, when the mileage situation is such that a demoted man should be added to the engineers' working list, such concurrence will be forthcoming immediately, because the demoted man will be advanced from the firemen's working list, but when, under the mileage regulations, the demotion of a man from the working lists of the engineers is called for, such concurrence may and doubtless will be unduly delayed, since, under the firemen's rules governing return to the firemen's working list, such demoted man would return to the firemen's working list. Such is human nature and craft rivalry.

4. That the subject matter of the Mediation Agreement concerns only rules involving services as engineers is confirmed by the statements of the Carrier. The apparent change of Carrier's position was induced by threat of a strike.

As shown in the statement of facts, the Carrier in 1939 was engaged in a controversy with the Firemen's Committee concerning the same matters which later became the subject matter of the Mediation Agreement, namely, the use of emergency engineers at Smithville, Texas (Plaintiff's Exhibit 3, R. 174, 176), the rule for calling emergency engineers under the agreement of December 14, 1938 (R. 177), and the broad question of regulating engineers' working lists generally (R. 177). The Carrier at that time sought the services of the National Mediation Board, and in the letter invoking the services of the Board the Carrier clearly and distinctly stated its position on the type of service involved and its understanding of duties in connection therewith under the Railway Labor Act. Its position on these matters was that it was "obvious" (R. 178): (1) that the class of service involved was that of locomotive engineers, (2) that the Firemen's Committee sought to have the Carrier adopt rules representing the views of that Committee for the handling of locomotive engineers, (3) that the Carrier was being asked by the Firemen's Committee to treat with it as (at least partially) the representative of the class of locomotive engineers for which class the Carrier understood the Engineers' Committee was the "accredited and the exclusive representative."

The Carrier had taken the same position on three previous occasions, once in a letter dated July 6, 1938 to the Secretary of the National Mediation Board, once in a letter dated December 14, 1938 to the Chairman of the Firemen's Committee, and again in another letter to the Chairman of the Firemen's Committee dated April 11, 1939, all of these

letters being concerned with the controversy aforementioned between the Carrier and the Firemen's Committee. Said the Carrier in the letter of July 6, 1938:

> "The service involved in the dispute is not service of locomotive firemen; it is service of locomotive engineers" (R. 185).

And again in the same letter:

> "The firemen's organization is seeking to apply the interpretation of the organization to the situation in question, whereas the *engineers'* organization, which is the accredited representative of the locomotive engineers as a class, denies the right of the firemen's organization to interfere with the interpretation, application, etc., of the *engineers'* agreement" (R. 186).

In the letter of December 14, 1938, the Carrier said:

> "What we consider our obligation is simply stated. That is, we are obligated to recognize the Brotherhood of Locomotive Engineers as the accredited and exclusive representative of locomotive engineers as a class" (R. 187).

and further said that while the Carrier deplored the lack of agreement between the two organizations, it nevertheless felt that its "obligation under the Railway Labor Act is as outlined in the foregoing" (R. 187).

In the letter of April 11, 1939, the Carrier said:

> "In any case, however, we consider it our obligation, imposed upon us by statute, to treat with the engineers' organization as the accredited representative for the services of men used as engineers, the same as we consider the firemen's organization in connection with the services of men used as firemen; and we have not and do not now consider it lawful or proper for us to enter into an understanding or agreement with an organization representing one class to cover the handling of men used in another service, for which there is an accredited representative for that class" (R. 189).

And again

> "* * * We shall also recognize what we consider the exclusive right of the engineers' organization to legislate for locomotive engineers as a class * * *" (R. 189-190).

The foregoing statement of the Carrier's position, we believe, represents the carefully considered judgment of the Carrier that the type of service involved in the rules agreed upon in the Mediation Agreement relate solely to service as engineers and that it was its duty under the Railway Labor Act to make agreements only with the Engineers' Committee as the representative of the craft of locomotive engineers concerning those matters. There is nothing in the record in this case to indicate that the Carrier has changed its position and judgment as to the type of service involved or as to its duties under the Railway Labor Act in connection therewith. True, the Carrier did enter into the agreement with the Firemen's Committee dealing with these same matters contrary to the position previously stated. There is nothing in the record, however, to show that the Carrier entered into this agreement because it considered its position formerly taken was legally incorrect. On the contrary, the record conclusively shows that the Carrier entered into the Mediation Agreement with the Firemen's Committee solely as the result of the threat of strike by the firemen's organization if it did not enter into the agreement. There can be little doubt that the Carrier, in disregard of what it clearly believed to be its duty under the law, entered into the Mediation Agreement and agreed to cancel the agreements then in effect with the Engineers' Committee, for the purpose of avoiding a strike, or the threat of strike, by the firemen (R. 201), and because the Carrier was "up against the situation" (R. 194) of the threatened strike, leaving the consequences to an attempt "to work the matter out with the engineers" (R. 194).

We submit that the views of the Carrier as expressed

through its Vice President and General Manager, as the conclusion of those engaged in practical railroad operation, that the service involved in the rules which make up the subject matter of the Mediation Agreement relate only to service to be performed by men in the craft of locomotive engineers, a type of service distinct from that of locomotive firemen, should be most persuasive. While we have no doubt that the Carrier's conclusions as to its duties under the law in respect of the matters, which later became the subject of the Mediation Agreement, were reached after careful consideration of both its operating and legal officers, the Carrier's views of its duty under the law are, of course, not controlling upon the Court. We submit, however, that the Carrier's views as to its duty under the Railway Labor Act, as quoted in this point, were in accord with the decision of this Court in the *Virginian R. Co.* case, and were correct.

VII.

THE DECISION OF THE CIRCUIT COURT OF APPEALS APPROVING DUAL REPRESENTATION VIOLATES THE RAILWAY LABOR ACT.

1. The separateness of the engineers' and firemen's crafts is not affected by the "transfer" of men from one craft to the other.

There is confusion in the decree of the Circuit Court of Appeals in respect of what it calls the "rules for transferring employees from the craft of firemen to the craft of engineers, or vice versa" (R. 301). Because such rules are said to be of concern to both crafts (R. 299), the court concludes that the Engineers' Committee does not have the exclusive right to confer and agree about the rules in question (R. 300). This conclusion, while apparently recognizing that there are two separate crafts, fails completely to recognize that each craft has its own jurisdiction, and that neither craft may invade the jurisdiction of the other. A "transfer" from fireman to engineer

is an entry into the engineers' craft for the purpose of performing services as an engineer. The conditions of such entry are for agreement solely between the Engineers' Committee and the Carrier. A "transfer" from engineer to fireman is an entry into the firemen's craft for the purpose of performing services as a fireman. The conditions of such entry are for agreement between the Firemen's Committee and the Carrier. Thus in "transferring" from one craft to the other two distinct and separate controls are involved, but the decree fails to distinguish between them.

The process of "transfer" of employees from the working lists of one craft to those of the other may be described as follows. As heretofore shown in the statement of facts, there are mileage regulations in effect agreed upon between the Carrier and the Engineers' Committee governing the number of miles engineers may run per month. Thus, in passenger service they are permitted to make between 4000 and 4800 miles per month, and in pool freight service between 3200 and 3800 miles per month. When engineers on a given working list average more than the maximum, additional men are placed on the list. When they average less than the minimum, men are removed from the list. This addition to or removal from the lists is necessarily dependent upon the fluctuations in the amount of business available. When men are added to the working lists of engineers they are advanced from the ranks of the firemen in accordance with their seniority standing on the engineers' seniority roster, and when engineers are removed from the working lists of engineers they are demoted therefrom in the reverse order of their seniority standing as engineers on the engineers' seniority roster. Men so demoted from the working lists of engineers with least seniority (usually the extra lists, R. 155), return to the working lists of firemen in accordance with their seniority standing

on the firemen's seniority roster and in accordance with rules agreed upon between the Carrier and the firemen's craft representative.

There is no basis for giving to the Firemen's Committee any right to regulate the terms or conditions and rules governing entry into the engineers' craft because those who enter the engineers' craft come from the firemen's craft. Men entering into service in any craft must come from some place outside of the craft. Yet that fact, so far as it has ever come to our attention, has never required or permitted the source from which such men come to the craft to dictate or make the rules under which they may enter the craft. That the particular source from which men enter the engineers' craft is the firemen's craft should not, and does not, change the situation so as to permit the firemen's craft to dictate the terms under which they may do so. There is, and always has been, a dividing line between the two crafts, and when this line of demarcation is observed there can be no such confusion as arises from the decree of the Circuit Court of Appeals. That line of demarcation, as shown in the case of *General Committee of Adjustment, etc. v. Southern Pacific Co., et al., supra*, at p. 205, gives to the Engineers' Committee the exclusive right to negotiate the rules and conditions under which men enter the engineers' craft after being promoted from the firemen's craft; and gives to the Firemen's Committee the corresponding exclusive right to negotiate the rules and conditions under which men enter the firemen's craft after being demoted from the engineers' craft.

2. The "ebb and flow" of men between the two crafts does not establish a "field of overlapping interest" between the crafts, or affect the bargaining rights of the crafts.

In the court below it was contended by the Firemen's Committee that there was a field of overlapping interest between the crafts of engineers and firemen which gave that Committee the right to bargain respecting engineers' rules. It was sought to base this contention, apparently, upon the situation hereinabove mentioned of the movement of individual employees from one craft to the other in the application of the mileage regulations. We think this contention is erroneous and of no significance.

The two crafts do not overlap. Their functions are entirely different; an engineer "runs," and a fireman "fires," the locomotive. The respective duties and responsibilities of the two crafts remain constant, and are, and always have been, separate and distinct. The *personnel* of the craft may and does change by reason of death, resignation, the application of mileage regulations in the fluctuation in business or other causes, but there are no changes in the duties and status of the respective *crafts* of engine employees. Overlapping, so-called, is a condition that relates to the individual, not the crafts. The movement or "ebb and flow" of men from one craft to the other does not affect the separateness of and the clear distinction between these established and recognized crafts.[1] An ebb and flow exists only in the case of comparatively few men, that is, the youngest men in point of seniority on the engineers' working list and the oldest men in point

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[1] In its brief, page 4, in the Circuit Court of Appeals, the Carrier made the following statement: "'Craft of firemen' and 'craft of engineers' are easily those of misunderstanding. Neither of these terms refers to a group of men qualified for work and employment of this kind but means, respectively, 'the firemen *then* working as such' and 'engineers *then* working as such' for the defendants. The term 'craft' whenever used, means persons actually employed and engaged in performing the work described."

of seniority on the firemen's list, and it occurs only when these men move up or down from one craft to the other. In times of prosperity the greater movement is upward and in times of depression the greater movement is downward. So, while the amount of work available for engineers, and consequently the *number* and *identity* of men employed as such, may vary from time to time, all of such work belongs to the engineers' craft. And all of the services required to handle it are to be performed by engineers. We submit that the division of such work among engineers cannot properly be governed by firemen's rules and regulations, and, similarly that the division among the firemen of the work available to the firemen's craft cannot properly be governed by engineers' rules.

3. Regardless of the interest of individual employees or groups of employees in a dispute, only the representative chosen by the majority of a craft may treat and contract with a carrier concerning rules governing the craft.

The decision of the Fifth Circuit Court of Appeals appears to be based, in part at least, upon a misconception of the firemen's "interest" in the rules governing the engineers' craft. In the opinion (R. 299) the court refers to and quotes § 2, Second, of the Act, reading as follows:

> "Section 2, Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof *interested in the dispute.*" (Emphasis by the court.)

From a consideration of this section the court proceeds to announce the conclusion, later carried into the decree as aforementioned, that the rules for transferring employees from the craft of firemen to the craft of engineers, or vice versa, are matters of such interest or concern to both crafts

that either or both may negotiate the rules governing entry into one craft or the other.

We first point out that, assuming *arguendo* that firemen have an interest in the rules providing for "transfer" of men from one craft to the other, it does not follow that such interest confers upon the Firemen's Committee the right to say when and under what conditions such men will enter or leave the engineers' craft. It may be that the assignment of firemen to engineers' jobs will improve the relative standing or assignment of many men on the firemen's lists, and will make room for the employment of additional firemen; and that the acceptance into the firemen's ranks of demoted engineers will adversely affect the standing of other firemen and result in junior firemen being furloughed. But the effect of such transfers is without legal significance where, as here, the crafts involved in such transfer are separate and distinct crafts.

The situation fundamentally is no different from that prevailing where there is no ebb and flow between crafts. Thus, in the case of the craft of machinists employed by a carrier, when the amount of work available for this craft decreases, the youngest men in point of seniority, under rules in force, may be required to leave the craft and be furloughed out of the craft. So, in the case of the engineers' craft, when the amount of work decreases, under rules in force, the youngest engineers in point of seniority are demoted or furloughed out of the craft. In both cases the removal from the craft is brought about as the result of the rules of the craft from which the removal is made. In a furloughed machinist's case, there probably is no other craft in which he holds seniority and to which he may go. He is out of a job. In a demoted engineer's case, however, he may be out of a job if he is a hired engineer, or he may return to work as a fireman in accordance with his fireman's seniority. But if he does return to firing service it is with the consent of the firemen's craft and because the rules of

that craft so provide. Similarly, the return of the demoted engineer to service in the engineers' craft is by the consent of the engineers' craft and in conformity with its rules. The fact that the firemen's craft may be interested in the conditions under which such demoted men are required to *leave* the firemen's craft—or in the promotion or transfer of firemen to the craft of engineers—because of the effect which such movement has upon the working lists of firemen, does not confer upon the firemen's craft the right to regulate the conditions under which the engineers' craft will accept such men. It is our position that an engineer upon demotion enters the firemen's craft in accordance with rules which govern that craft, and that likewise a promoted fireman enters the engineers' craft in accordance with rules governing that craft; that each craft should determine for itself the rules under which men enter therein.

Neither the firemen nor the firemen's craft have any interest in engineers' rules which entitled the firemen's craft representative to treat or contract with the carrier concerning engineers' rules. It is natural that each individual fireman has a personal ambition or aspiration to become an engineer and to obtain the higher pay and higher grade of service enjoyed by the senior craft (R. 284). In that sense the members of the firemen's craft had an interest or concern in the three matters covered by the Mediation Agreement. On the same basis, there would be scarcely a single rule in the entire engineers' schedule as to which individual firemen would not have an interest, and there would be scarcely a rule in the firemen's schedule as to which individual engineers would not have an interest. Such interest, however, in neither case is a matter of craft interest, and it is not a matter of present interest to the individual. It concerns the future—an interest in what the individual members of the craft may be doing in the future. For example, a demoted engineer who may have been working as a fireman for

months or even years would have a prospective interest in the rates of pay for engineers and in the rules affecting the working conditions of engineers as contained in the engineers' schedule, because at some future time he might be called for service as an engineer. Similarly, substantially all of the engineers (except those with very high seniority) would be interested in the rules in the firemen's schedule relating to pay or working conditions, because as the result of changing conditions of traffic at some future time they might be demoted to the firemen's craft. It is obvious, however, that such individual, personal interest cannot vest in the members of the firemen's craft the right to regulate, through the firemen's craft representative, the working conditions of locomotive engineers any more than such interest of the engineers in the working conditions of the firemen could vest in the engineers' craft the right to regulate the firemen's working conditions. It is merely a play on words to say in one breath that the designated representative of a craft has an exclusive right to treat, to bargain collectively, and to contract for the craft, and in the next breath take that right away by saying that such right is limited by the personal interests or desires of the members of another craft. The holding in the *Virginian R. Co.* case cannot be circumvented in such a manner. If it can, dual representation will result.

If the dual representation doctrine of the Circuit Court of Appeals is accepted it would completely nullify the statutory right of exclusive *majority* craft representation. It would give to the representative and the members of the firemen's craft a measure of control over working conditions of locomotive engineers which is denied to many full time engineers. An illustration will at once make this clear. Assume that there are 500 full time members of the engineers' craft; that a majority of 300 elect the craft representative, who enters into an agreement with the carrier that no engineer will be permitted to run more than 4800

miles in passenger service in one month. Assume that the 200 minority engineers oppose such rule. It cannot be denied that the 200 in the minority are "interested" in the amount of permissible mileage, but they must abide by the rule adopted by the majority. *If the firemen's craft is permitted to contract as they have done in this case, that craft and its representative could control the regulation of the engineers' mileage through negotiation and contract with the carrier, and thus deprive the majority of the engineers' craft of the right of exclusive representation.*

In the illustration given no one would contend that Section 2, Fourth, of the Act did not prohibit the 200 minority engineers from collectively contracting with the carrier on the subject involved or on any other subject. Congress expressly excluded the minority members of the craft from collectively bargaining with the carrier, although the latter have an actual *present* interest in the subject matter of a dispute. Did Congress at the same time and in the same statute intend to grant the representative of another craft whose members at most have only a *future* interest in the same controversy the right to bargain and contract thereon with the carrier? If individual "interest" in the rule or regulation governs the right to contract with the carrier, then the question is presented as to the extent or kind of interest which should be required. Is a future interest, however remote, sufficient, or should it be required that the interest be an actual present interest? But if individual interest, of whatever degree, be a standard of judging the right to bargain collectively with the carrier, we are confronted with the proposition that there would ever be present in the minority members of the craft, whose services were governed by the rule or working condition involved in the dispute, an interest at least as great as that of any persons not presently working in the craft. *Yet these minority members, with a co-extensive or greater interest, are barred from any right of contracting with the carrier.*

That both the carrier and the employees be interested in the dispute is a prerequisite to the right of their representatives to confer, consider, and negotiate under § 2, Second, of the Act. But this section is not susceptible of the construction placed on it by the Circuit Court of Appeals (R. 299, 132 F. 2nd, 94) to the effect that because the men employed in the firemen's craft individually are or claim to be "interested in the dispute" concerning rules and working conditions of the engineers' craft, the matter becomes one of craft interest to the firemen's craft enabling the Firemen's Committee to treat and contract with the Carrier at least equally with the Engineers' Committee concerning rules for the engineers' craft. Whether the interest of the members of the firemen's craft in engineers' craft rules be considered some sort of a firemen's craft interest or whether it be considered some sort of an engineers' craft minority interest (which are not conceded), in either case it is without legal significance in so far as the right of collective bargaining for the rules governing the engineers' craft is concerned. We submit that the only representative of the "employees interested in the dispute" which is authorized under the Railway Labor Act, as construed in the *Virginian R. Co.* case, to treat and contract with the carrier concerning the rules and working conditions governing a particular craft, is the representative chosen by the majority of that craft.

CONCLUSION.

The subject matter of the Mediation Agreement is rules governing the craft of locomotive engineers, as to which the Engineers' Committee has the exclusive right to bargain collectively with the Carrier. The Carrier was prohibited by the Railway Labor Act from treating or contracting concerning such matters with any craft representative except the Engineers' Committee. The Mediation Agreement, between the Carrier and the Firemen's Committee, therefore, was entered into in violation of the Railway Labor Act and is illegal and void.

This Court should reverse the judgment of the Circuit Court of Appeals for the Fifth Circuit, and render an appropriate declaratory decree in favor of the petitioner.

Respectfully submitted,

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APPENDIX A.

The Railway Labor Act, as amended (Act of May 20, 1926, c. 347, 44 Stat. 577, Act of June 21, 1934, c. 691, 48 Stat. 1185, Act of Aug. 13, 1940, c. 664 §§ 2, 3, 54 Stat. 785; U. S. C., Tit. 45, §§ 151-163).

(Sections 3 and 7-11, omitted.)

Definitions

Section 1. When used in this Act and for the purposes of this Act—

First. The term "carrier" includes any express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such "carrier": Provided, however, That the term "carrier" shall not include any street, interurban, or suburban electric railway, unless such a railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term "carrier" shall not include any company by reason of its being engaged in the mining of coal, the supplying

of coal to a carrier where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

Second. The term "Adjustment Board" means the National Railroad Adjustment Board created by this Act.

Third. The term "Mediation Board" means the National Mediation Board created by this Act.

Fourth. The term "commerce" means commerce among the several States or between any State, Territory, or the District of Columbia and any foreign nation, or between any Territory or the District of Columbia and any State, or between any Territory and any other Territory, or between any Territory and the District of Columbia, or within any Territory or the District of Columbia, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign nation.

Fifth. The term "employee" as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders: Provided, however, That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission.

The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

Sixth. The term "representative" means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its of their employees, to act for it or them.

Seventh. The terms "district court" includes the Supreme Court of the district of Columbia; and the term "circuit court of appeals" includes the Court of Appeals of the District of Columbia.

This Act may be cited as the "Railway Labor Act."

GENERAL PURPOSES

SEC. 2. The purposes of the Act are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this Act; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

General Duties

First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

Third. Representatives, for the purposes of this Act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this Act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, it officers or agents, shall deny or in any way question the right of its employees to

join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: Provided, That nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

Fifth. No carrier, its officers, or agents shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this Act, then such carrier shall notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way.

Sixth. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to

such dispute, to specify a time and place at which such conference shall be held: Provided, (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: And provided further, That nothing in this Act shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

Seventh. No carrier, its officers or agents shall change the rates of pay, rules, or working conditions of it employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act.

Eighth. Every carrier shall notify its employees by printed notices in such form and posted at such times and places as shall be specified by the Mediation Board that all disputes between the carrier and its employees will be handled in accordance with the requirements of this Act, and in such notices there shall be printed verbatim, in large type, the third, fourth, and fifth paragraphs of this section. The provisions of said paragraphs are hereby made a part of the contract of employment between the carrier and each employee, and shall be held binding upon the parties, regardless of any other express or implied agreements between them.

Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals

or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

Tenth. The willful failure or refusal of any carrier, its officers or agents to comply with the terms of the third, fourth, fifth, seventh, or eighth paragraph of this section shall be a misdemeanor, and upon conviction thereof the carrier, officer, or agent offending shall be subject to a fine of not less than $1,000 nor more than $20,000 or imprisonment for not more than six months, or both fine and imprisonment, for each offense, and each day during which such carrier, officer, or agent shall willfully fail or refuse to comply with the terms of the said paragraphs of this section shall constitute a separate offense. It shall be the duty of any district attorney of the United States to whom any duly designated representative of a carrier's employees

may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States, all necessary proceedings for the enforcement of the provisions of this section, and for the punishment of all violations thereof and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States. Provided, That nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service without his consent.

NATIONAL MEDIATION BOARD

SEC. 4. First. The Board of Mediation is hereby abolished, effective thirty days from the approval of this Act and the members, secretary, officers, assistants, employees, and agents thereof, in office upon the date of the approval of this Act, shall continue to function and receive their salaries for a period of thirty days from such date in the same manner as though this Act had not been passed. There is hereby established, as an independent agency in the executive branch of the Government, a board to be known as the "National Mediation Board," to be composed of three members appointed by the President, by and with the advice and consent of the Senate, not more than two of whom shall be of the same political party. The terms of office of the members first appointed shall begin as soon as the members shall qualify, but not before thirty days after the approval of this Act, and expire, as designated by the President at the time of nomination, one on February 1, 1935, one on February 1, 1936, and one on February 1, 1937. The terms of office for all successors shall expire three years after the expiration of the terms for which their predeces-

sors were appointed; but any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor. Vacancies in the Board shall not impair the powers nor affect the duties of the Board nor of the remaining members of the Board. Two of the members in office shall constitute a quorum for the transaction of the business of the Board. Each member of the Board shall receive a salary at the rate of $10,000 per annum, together with necessary traveling expenses and subsistence expenses, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while away from the principal office of the Board on business required by this Act. No person in the employment of or who is pecuniarily or otherwise interested in any organization of employees or any carrier shall enter upon the duties of or continue to be a member of the Board.

All cases referred to the Board of Mediation and unsettled on the date of the approval of this Act shall be handled to conclusion by the Mediation Board.

A member of the Board may be removed by the President for inefficiency, neglect of duty, malfeasance in office, or ineligibility, but for no other cause.

Second. The Mediation Board shall annually designate a member to act as chairman. The Board shall maintain its principal office in the District of Columbia, but it may meet at any other place whenever it deems it necessary so to do. The Board may designate one or more of its members to exercise the functions of the Board in mediation proceedings. Each member of the Board shall have power to administer oaths and affirmations. The Board shall have a seal which shall be judicially noticed. The Board shall make an annual report to Congress.

Third. The Mediation Board may (1) appoint such experts and assistants to act in a confidential capacity and,

subject to the provisions of the civil service laws, such other officers and employees as are essential to the effective transaction of the work of the Board; (2) in accordance with the Classification Act of 1923, fix the salaries of such experts, assistants, officers, and employees; and (3) make such expenditures (including expenditures for rent and personal services at the seat of government and elsewhere, for law books, periodicals, and books of reference, and for printing and binding, and including expenditures for salaries and compensation, necessary traveling expenses and expenses actually incurred for subsistence, and other necessary expenses of the Mediation Board, Adjustment Board, Regional Adjustment Boards established under paragraph (w) of section 3, and boards of arbitration, in accordance with the provisions of this section and sections 3 and 7, respectively), as may be necessary for the execution of the functions vested in the Board, in the Adjustment Board and in the boards of arbitration, and as may be provided for by the Congress from time to time. All expenditures of the Board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

Fourth. The Mediation Board is hereby authorized by its order to assign, or refer, any portion of its work, business, or functions arising under this or any other Act of Congress, or referred to it by Congress or either branch thereof, to an individual member of the Board or to an employee or employees of the Board to be designated by such order for action thereon, and by its order at any time to amend, modify, supplement, or rescind any such assignment or reference. All such orders shall take effect forthwith and remain in effect until otherwise ordered by the Board. In conformity with and subject to the order or orders of the Mediation Board in the premises, and [sic] such individual member of the Board or employee designated shall have power and authority to act as to any of

said work, business, or functions so assigned or referred to him for action by the Board.

Fifth. All officers and employees of the Board of Mediation (except the members thereof, whose officers are hereby abolished) whose services in the judgment of the Mediation Board are necessary to the efficient operation of the Board are hereby transferred to the Board, without change in classification or compensation; except that the Board may provide for the adjustment of such classification or compensation to conform to the duties to which such officers and employees may be assigned.

All unexpended appropriations for the operation of the Board of Mediation that are available at the time of the abolition of the Board of Mediation shall be transferred to the Mediation Board and shall be available for its use for salaries and other authorized expenditures.

FUNCTIONS OF MEDIATION BOARD

SEC. 5. First. The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the

said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in section 10 of this Act) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this Act.

If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under section 10 of this Act, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose.

Second. In any case in which a controversy arises over the meaning or the application of any agreement reached through mediation under the provisions of this Act, either party to the said agreement, or both, may apply to the Mediation Board for an interpretation of the meaning or application of such agreement. The said Board shall upon receipt of such request notify the parties to the controversy, and after a hearing on both sides give its interpretation within thirty days.

Third. The Mediation Board shall have the following duties with respect to the arbitration of disputes under section 7 of this Act:

(a) On failure of the arbitrators named by the parties to agree on the remaining arbitrator or arbitrators within the time set by section 7 of this Act, it shall be the duty of the Mediation Board to name such remaining arbitrator or arbitrators. It shall be the duty of the Board in naming such arbitrator or arbitrators to appoint only those whom the Board shall deem wholly disinterested in the controversy to be arbitrated and impartial and without bias as between the parties to such arbitration. Should, however,

the Board name an arbitrator or arbitrators not so disinterested and impartial, then, upon proper investigation and presentation of the facts, the Board shall promptly remove such arbitrator.

If an arbitrator named by the Mediation Board, in accordance with the provisions of this Act, shall be removed by such Board as provided by this Act, or if such an arbitrator refuses or is unable to serve, it shall be the duty of the Mediation Board, promptly, to select another arbitrator, in the same manner as provided in this Act for an original appointment by the Mediation Board.

(b) Any member of the Mediation Board is authorized to take the acknowledgment of an agreement to arbitrate under this Act. When so acknowledged, or when acknowledged by the parties before a notary public or the clerk of a district court or a circuit court of appeals of the United States, such agreement to arbitrate shall be delivered to a member of said Board or transmitted to said Board, to be filed in its office.

(c) When an agreement to arbitrate has been filed with the Mediation Board, or with one of its members, as provided by this section, and when the said Board has been furnished the names of the arbitrators chosen by the parties to the controversy, it shall be the duty of the Board to cause a notice in writing to be served upon said arbitrators, notifying them of their appointment, requesting them to meet promptly to name the remaining arbitrator or arbitrators necessary to complete the Board of Arbitration, and advising them of the period within which, as provided by the agreement to arbitrate, they are empowered to name such arbitrator or arbitrators.

(d) Either party to an arbitration desiring the reconvening of a board of arbitration to pass upon any controversy arising over the meaning or application of an award may so notify the Mediation Board in writing,

stating in such notice the question or questions to be submitted to such reconvened Board. The Mediation Board shall thereupon promptly communicate with the members of the Board of Arbitration, or a subcommittee of such Board appointed for such purpose pursuant to a provision in the agreement to arbitrate, and arrange for the reconvening of said Board of Arbitration or subcommittee, and shall notify the respective parties to the controversy of the time and place at which the Board, or the subcommittee, will meet for hearings upon the matters in controversy to be submitted to it. No evidence other than that contained in the record filed with the original award shall be received or considered by such reconvened Board or subcommittee, except such evidence as may be necessary to illustrate the interpretations suggested by the parties. If any member of the original Board is unable or unwilling to serve on such reconvened Board or subcommittee thereof, another arbitrator shall be named in the same manner and with the same powers and duties as such original arbitrator.

(e) Within sixty days after the approval of this Act every carrier shall file with the Mediation Board a copy of each contract with its employees in effect on the 1st day of April 1934, covering rates of pay, rules, and working conditions. If no contract with any craft or class of its employees has been entered into, the carrier shall file with the Mediation Board a statement of that fact including also a statement of the rates of pay, rules, and working conditions applicable in dealing with such craft or class. When any new contract is executed or change is made in an existing contract with any class or craft of its employees covering rates of pay, rules, or working conditions, or in those rates of pay, rules, and working conditions of employees not covered by contract, the carrier shall file the same with the Mediation Board within thirty days after such new contract or change in existing con-

tract has been executed or rates of pay, rules, and working conditions have been made effective.

(f) The Mediation Board shall be the custodian of all papers and documents heretofore filed with or transferred to the Board of Mediation bearing upon the settlement, adjustment, or determination of disputes between carriers and their employees or upon mediation or arbitration proceedings held under or pursuant to the provisions of any Act of Congress in respect thereto; and the President is authorized to designate a custodian of the records and property of the Board of Mediation until the transfer and delivery of such records to the Mediation Board and to require the transfer and delivery to the Mediation Board of any and all such papers and documents filed with it or in its possession.

SEC. 6. Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

APPENDIX B.

The Declaratory Judgments Act of June 14, 1934, c. 512, 48 Stat. 955, 28 U. S. C. § 400.

(1) In cases of actual controversy (except with respect to Federal taxes) the courts of the United States shall have power upon petition, declaration, complaint, or other appropriate pleadings to declare rights and other legal relations of any interested party petitioning for such declaration, whether or not further relief is or could be prayed, and such declaration shall have the force and effect of a final judgment or decree and be reviewable as such.

(2) Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party, whose rights have been adjudicated by the declaration, to show cause why further relief should not be granted forthwith.

(3) When a declaration of right or the granting of further relief based thereon shall involve the determination of issues of fact triable by a jury, such issues may be submitted to a jury in the form of interrogatories, with proper instructions by the court, whether a general verdict be required or not.

APPENDIX C.

The Norris-LaGuardia Act of Mar. 23, 1932, c. 90, 47 Stat. 70, 29 U. S. C. §§ 101-115.

SEC. 1. No court of the United States, as herein defined, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this Act.

SEC. 2. In the interpretation of this Act and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are herein defined and limited, the public policy of the United States is hereby declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted.

SEC. 3. Any undertaking or promise, such as is described in this section, or any other undertaking or promise in conflict with the public policy declared in section 2 of this Act, is hereby declared to be contrary to the public policy of the United States, shall not be enforceable in any court of the United States and shall not afford any basis for the granting of legal or equitable relief by any such court, including specifically the following:

Every undertaking or promise hereafter made, whether written or oral, express or implied, constituting or contained in any contract or agreement of hiring or employment between any individual, firm, company, association, or corporation, and any employee or prospective employee of the same, whereby

(a) Either party to such contract or agreement undertakes or promises not to join, become, or remain a member of any labor organization or of any employer organization; or

(b) Either party to such contract or agreement undertakes or promises that he will withdraw from an employment relation in the event that he joins, becomes, or remains a member of any labor organization or of any employer organization.

SEC. 4. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless

of any such undertaking or promise as is described in section 3 of this Act;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 3 of this Act.

SEC. 5. No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in section 4 of this Act.

SEC. 6. No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held re-

sponsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

SEC. 7. No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is

sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: *Provided, however*, That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking herein mentioned shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

SEC. 8. No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

SEC. 9. No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided herein.

SEC. 10. Whenever any court of the United States shall issue or deny any temporary injunction in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings and on his filing the usual bond for costs, forthwith certify as in ordinary cases the record of the case to the circuit court of appeals for its review. Upon the filing of such record in the circuit court of appeals, the appeal shall be heard and the temporary injunctive order affirmed, modified, or set aside with the greatest possible expedition, giving the proceedings precedence over all other matters except older matters of the same character.

SEC. 11. In all cases arising under this Act in which a person shall be charged with contempt in a court of the United States (as herein defined), the accused shall enjoy the right to a speedy and public trial by an impartial jury

of the State and district wherein the contempt shall have been committed: *Provided*, That this right shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders, or process of the court.

SEC. 12. The defendant in any proceeding for contempt of court may file with the court a demand for the retirement of the judge sitting in the proceeding, if the contempt arises from an attack upon the character or conduct of such judge and if the attack occurred elsewhere than in the presence of the court or so near thereto as to interfere directly with the administration of justice. Upon the filing of any such demand the judge shall thereupon proceed no further, but another judge shall be designated in the same manner as is provided by law. The demand shall be filed prior to the hearing in the contempt proceeding.

SEC. 13. When used in this Act, and for the purposes of this Act—

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of

"persons participating or interested" therein (as herein after defined).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(d) The term "court of the United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia.

SEC. 14. If any provision of this Act or the application thereof to any person or circumstance is held unconstitutional or otherwise invalid, the remaining provisions of the Act and the application of such provisions to other persons or circumstances shall not be affected thereby.

SEC. 15. All Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed.

Approved, March 23, 1932.

In the Supreme Court of the United States

OCTOBER TERM, 1943.

No. 23.

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE MISSOURI-KANSAS-TEXAS RAILROAD, AN UNINCORPORATED ASSOCIATION,

Petitioner,

vs.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO
THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

REPLY BRIEF FOR PETITIONER.

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GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE MISSOURI-KANSAS-TEXAS RAILROAD, AN UNINCORPORATED ASSOCIATION,

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REPLY BRIEF FOR PETITIONER.

The Petitioner's Case Presents a Substantial Federal Question.

In their answer to Question 2 propounded by the Court, the Firemen (Brief pp. 15-17) raise the question of the *substantiality* of the federal question here presented. They say that the Engineers' claim is so plainly without color of merit as to be unsubstantial, and hence the Court does not have jurisdiction. They do not assert that the question

presented is not a federal one, or deny that petitioner's claim involves the construction and effect of the Railway Labor Act and hence arises under 28 U. S. C. § 41(8) within the rules announced in *Gulley v. First National Bank*, 299 U. S. 109. It will be noticed that the M.K.T. Firemen's Committee stands alone among the parties to the engineers' cases now before this Court in questioning jurisdiction.[1]

The Firemen's argument in support of this point is without merit. There is no question but that petitioner is relying upon the Railway Labor Act for its rights, and that the rights asserted thereunder are valuable and substantial, and thus meet the first test laid down in *The Fair v. Kohler Die Co.*, 228 U. S. 22, 25, cited by the Firemen. As to the second test there prescribed, namely, whether the claim of right is frivolous, it is equally apparent that the Firemen's contention is without foundation. Here the right claimed by petitioner is the right conferred *by the Act* upon the designated representative of a given craft or class of employees to bargain exclusively with the carrier concerning the rules and working conditions applicable to the craft or class it represents. *Virginian R. Co. v. System Federation No. 40*, 300 U. S. 515, 548-549. The short and sufficient answer to this argument therefore is that a right thus recognized by this Court cannot, to say the least, be

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[1] In No. 41, the *Southern Pacific* case, where the same jurisdictional question is presented, the Southern Pacific Firemen's Committee not only fails to raise this objection but affirmatively takes the position that a declaration should be made on the mileage question on the basis of the presence of the federal question (Brief in No. 41, pp. 39-41). In the instant case the Carrier expressly states (Brief p. 9) that petitioner "alleged a substantial claim or right" under the Railway Labor Act, and concludes that the court has jurisdiction. Neither Circuit Court of Appeals found difficulty in entertaining jurisdiction, and it is significant that the Fifth Circuit Court, although holding against petitioner on the merits, nevertheless specifically upheld jurisdiction (R. 297, 132 F. 2d 91, 93).

without color of merit. We may add, however, that our reasons for believing that the right claimed by petitioner is conferred by the statute are developed further in the following discussion.

The Act Confers Upon the Designated Craft Representative the Right Exclusively to Contract the Collective Agreement Applicable to the Craft It Represents Free of Interference From Bargaining and Contract by the Representative of Another Craft on That Subject.

At pages 23-27 of their brief the Firemen argue that the Act affords no basis for petitioner's claim of the right exclusively to negotiate and contract the collective agreement concerning engineers' rules and working conditions. The argument proceeds to dissect the Act, and in the process to place an interpretation upon the provisions for craft bargaining contained in § 2 which would destroy the statutory plan. The narrowness of the view taken is at once apparent when it is seen that they interpret the second sentence of § 2, Fourth, as being designed only "to eliminate undemocratic control of a craft or class by a labor union representing only a minority." They dismiss § 2, Ninth, with the statement that it is an "admonition" to carriers to treat with the certified representative as the representative of the craft or class for the purposes of the Act.

The broad construction placed upon these provisions by this Court in the *Virginian R. Co.* case (300 U. S. at pp. 548-549), particularly with respect to the making of collective contracts, is thus entirely ignored. The Court there implemented the provisions of § 2, Fourth, for craft bargaining by the majority representative by holding that the obligation imposed upon the employer by § 2, Ninth, to treat, bargain and contract collectively with such representative *concerning the rates of pay, rules and working conditions of the craft it represents* is *exclusive*, and that

it could treat with no other representative concerning that matter.[1]

We have, heretofore pointed out that the prohibition against the carrier's treating with a representative other than the true one concerning the collective agreement governing a given craft, is as applicable and necessary in the case of interference by the representative of another craft as it is in the case of interference by a minority representative within such craft. This is because there can be only one contract applicable to a particular craft, and if a representative other than the duly designated one may contract for that craft the right of the craft itself (acting through its designated representative) to make its own rules is destroyed. It is plainly unnecessary, although the Firemen apparently contend to the contrary (Brief p. 24), that Congress should expressly specify that the command of § 2, Ninth, should apply to both types of interference. The prohibition is included by necessary implication.

The fact, referred to at page 29 of the Firemen's brief, that the injunction approved in the *Virginian R. Co.* case was directed at the interference caused by the car-

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[1] The court said (pp. 548-549):

"We think, as the Government concedes in its brief,[6] that the injunction against petitioner's entering into any contract concerning rules, rates of pay and working conditions, except with respondent, is designed only to prevent collective bargaining with anyone purporting to represent employees, other than respondent, who has been ascertained to be their true representative. When read in its context it must be taken to *prohibit the negotiation of labor contracts, generally applicable to employees in the mechanical department, with any representative other than respondent* * * *." (Italics ours.)

Footnote 6 quotes the Government's interpretation as follows:

"When the majority of a craft or class has (either by secret ballot or otherwise) selected a representative, the carrier cannot make with anyone other than the representative a collective contract (i.e., a contract which sets rates of pay, rules, or working conditions), whether the contract covers the class as a whole or a part thereof. * * *"

rier's bargaining with a rival representative of employees who were within the craft or class does not render the construction of the Act there made inapplicable to a case such as ours. The Court gave broad and full consideration to the meaning and effect of the newly enacted doctrine of statutory craft bargaining and majority representation, as is apparent from its reference to the Government's views *amicus curiae* of the general application of the majority rule principle in the negotiation of collective contracts. The Firemen's quotation (Brief p. 29) from only a part of the opinion does not reflect the full sweep of the decision in its protection of the right of the majority representative exclusively to contract for the rules *applicable to its craft.*

At page 30 of the Firemen's brief and at page 26 of the Carrier's brief, the respondents contend that there has been no interference here with petitioner's right of exclusive representation of the engineers' craft. The Firemen put the argument thus: "*In entering into the Mediation Agreement the Firemen's Brotherhood did not assume to represent or act on behalf of the engineers' craft in the least degree.*" They, of course, disregard the fact that the Act, as construed by this Court, gives to the Engineers' Committee the exclusive right to contract collectively for the rules applicable to its craft. As shown in our initial brief, there is no question but that the rules contained in the Mediation Agreement are rules governing the engineers' craft. Such extra-craft regulation of engineers' rules, we submit, cannot be justified by the plea that the Firemen's Committee was merely bargaining on behalf of the firemen's craft.

At page 25 of their brief, the Firemen assert that by § 1, Fifth, of the Act Congress has denied any intention of legislating on the powers or jurisdiction of railway labor organizations. They say that Congress has thus declared that the jurisdiction or powers of *labor unions* organized or "joined" by crafts of employees are not to be regarded

as in any way limited or defined by the provisions of the Act. The labor unions thus referred to include the Brotherhoods or their respective "Adjustment" or "Grievance" Committees. As pointed out at page 49 of the brief of the United States, *amicus curiae*, in No. 48, the *Switchmen's Union* case, the Act would not prevent a given union from having "jurisdiction" or "power" to represent any craft which might designate it to be its representative. An example is the fact that the Brotherhood of Railroad Trainmen represents the different crafts of trainmen, yard foremen, and yardmasters on certain roads.[1] A labor union may include within its membership employees in several crafts, as in the case of the Brotherhood of Railway Clerks which is composed, among others, of clerks, freight handlers, express and station employees. A union like the old American Railway Union embracing all railway employees might be formed. The organization of System Federation No. 40 of the Railway Employees Department (A. F. of L.) on the Virginian Railway is a further illustration. As disclosed in the *Virginian R. Co.* case, this organization is a federation, composed of six system craft organizations comprised of men working in the crafts of machinists, boilermakers, blacksmiths, electrical workers, sheet metal workers, and carmen, with authority to contract collectively for these crafts as one class or unit. Thus, a labor union may be organized with whatever form or internal structure and with "jurisdiction" to represent as many crafts or classes of employees[2] as its membership may decide. "Jurisdiction" and "powers" are thus used in the sense of the authority to act within the organization.

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[1] See Eighth Annual Report of the National Mediation Board (p. 42), Table 14—Collective Labor Agreements and Employee Representation on 138 Selected Carriers.

[2] The exercise of such jurisdiction, of course, would depend upon the desire of a particular class or craft to have the union represent it.

These illustrations serve to make clear that the purpose and effect of § 1, Fifth, is to provide for freedom of organization of railroal employees and of labor unions. Employees are left free to organize into whatever crafts or classes they may desire.[1]

But while § 1, Fifth, thus leaves the employees untrammeled in the *organization* of such crafts or classes as they may desire and with whatever internal structure or form may be designated by them, it is not directed to the extent or manner of the *bargaining* which may be carried on by such employee organizations after they have been duly formed. The bargaining provisions of the Act are found in § 2.

The Firemen say (Brief p. 26) that by "jurisdiction or powers" the Congress must of necessity have meant the subject matter or field with respect to which a labor organization representing a craft of employees would normally assume to bargain on behalf of the craft.[2] We submit that the statement is erroneous.

To give this language the interpretation claimed by the Firemen would bring § 1, Fifth, into conflict with § 2, Fourth, and Ninth. By the 1934 amendments, Congress selected crafts or classes of employees as the appropriate bargaining units in the railroad industry, and gave to the representative of each such craft or class the exclusive right to negotiate the rules and working conditions appli-

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[1] *Switchmen's Union v. National Mediation Board*, 135 F. 2d 785, 801 (dissenting opinion).

[2] Elsewhere in their brief (pp. 34-36) the Firemen appear to admit that there are subjects or fields of exclusive jurisdiction which belong to a craft. They apparently do not contend that § 1, Fifth, prevents effect being given to exclusive jurisdiction concerning these subjects. And in No. 41, the Southern Pacific Firemen's Committee concedes (Brief, p. 25) that if a craft were seeking to make a contract regarding a subject in which its members had no interest or only a secondary interest, the court would be justified in holding such contract invalid if in conflict with a contract held by the craft having a direct and immediate interest.

cable to that craft. To read into §1, Fifth, an intention to permit the representative of one craft to negotiate with a carrier concerning the rules and working conditions of another craft, and thereby to require or permit the carrier to deal with two representatives concerning the latter's rules, would conflict with and destroy the intended effect of the 1934 amendments as construed by this Court in the *Virginian R. Co.* case. It was clearly not the intent of Congress in amending the Act to permit such dual or multiple representation. While it may be that prior to 1934, *because of the absence of majority craft rule*, any group of employees had free and unrestricted "jurisdiction" or "powers" to negotiate, such rights were taken away by the 1934 amendments, and new rights were given to crafts of employees (§ 2, Fourth, and Ninth) and new obligations were imposed upon carriers (§2, Ninth). Dual representation was rejected and abolished.

While we do not believe that §1, Fifth, was intended in the setting of the 1926 Act to provide for "unlimited" bargaining jurisdiction or powers of employee organizations—but was intended only to clarify in certain respects the right of self-organization—we submit that, even if it be contended that the former was its earlier effect, it can no longer be given that construction in view of the new and specific provisions in the 1934 amendments for exclusive craft representation and bargaining. The applicable rule is that in case of disharmony between new provisions and those re-enacted in the course of amendment, the new provisions prevail as the latest declaration of the legislative will. 1 *Sutherland on Statutory Construction* (3rd Ed. 1943, p. 430); *Virginian R. Co. v. System Federation No. 40, supra*, at p. 563.

In conclusion of this discussion, we point out that in the case at bar no question is presented as to the self-organization of the engineer and firemen employees. The two crafts of locomotive engineers and locomotive firemen are recog-

nized as separate crafts or classes of employees within the meaning of the Act. We submit that there is therefore no occasion for the application of § 1, Fifth, here.

The "Findings of Fact" Have No Effect in This Case.

The Carrier (Brief pp. 18-21) contends that this Court is bound by the findings of fact made by the trial court (R. 77-78). Reference to such findings, as set out at page 19 of the Carrier's brief, will disclose that each of them, except possibly Finding 3, is clearly and solely a conclusion of law. Finding 3 reads:

> "I find that the controversy between the plaintiff and the third party defendant as set out in the pleadings, and as disclosed by the testimony, is over a matter which effects both crafts."

Assuming that the controversy does affect both crafts, the question remains as to what the consequence of this fact is under the Railway Labor Act. The finding, we submit, is so indefinite as to be without value in answering this question.

At page 21*ff* of its brief, the Carrier attempts to translate Finding 3 as requiring the conclusion that the Firemen are "interested" in the dispute between the Engineers and the Carrier within the meaning of the term "interested" as used in § 2, Second, of the Act. This process requires the ascertainment of the extent and nature of the interest referred to in § 2, Second. It is our position, heretofore amplified, that in bargaining for the rules and working conditions of a particular craft the only interest which entitles a group of employees to negotiate collectively is the interest of the majority of that craft. Therefore, employees "interested in the dispute" as referred to in § 2, Second, if belonging to the minority or to another craft, even though they be affected by the rules negotiated by the majority, have no right of collective contract.

The Carrier's argument (Brief pp. 21-22), that the Act imposes the duty upon all carriers to settle *all* disputes, irrespective of how or out of what matters they arise, obviously cannot be extended to permit freedom to negotiate with *any* "interested" employees with whom the Carrier may be willing to negotiate. To place this construction upon the Act would, of course, defeat the principle of majority rule upon which the 1934 amendments were based. We think § 2, First and Second, may best be harmonized with § 2, Fourth and Ninth, by considering that Congress has chosen the method of bargaining exclusively with the designated representative of a craft respecting that craft's rules as the means most likely to succeed in attaining the objective of the prompt and *orderly* settlement of disputes over collective contracts (General Purpose (4)).

The Engineers' Rules in Force Prior to the Mediation Agreement Did Not Violate Seniority.

It is argued by the Firemen (Brief, pp. 10-12) that one of the purposes of the Mediation Agreement, particularly Items 1 and 3 thereof, was to re-establish the "simple principle of seniority." The Engineers do not agree that there was any conflict between the principles of seniority found in Article 43 of the Engineers' Schedule or Article 38 of the Firemen's Schedule and the rules concerning the calling of emergency engineers which had been agreed upon between the Engineers' Committee and the Carrier, or that under the seniority rules of either Schedule it was required that the senior available demoted engineer should be called to fill an emergency vacancy caused by the exhausting of the engineers' extra list. Of course, in any event, it is submitted that whatever the seniority rules in the Firemen's Schedule may be, they cannot fix the rules for the calling of men to perform service as engineers. The only service to be performed under the rules covered by Items 1 and 3 of the Mediation Agreement is engineers' service, not fire-

men's service. Therefore, it is engineers' seniority or the exercise thereof, not firemen's seniority, which is involved, and engineers should be called in accordance with the rules concerning engineers' seniority agreed upon between the Carrier and the Engineers' Committee. Seniority is not an inherent or statutory right or one created by operation of law. It is a contract right. *Hartley v. Brotherhood of Ry. & Steamship Clerks, etc.* (Mich.) 277 N. W. 885; *Capra v. Local Lodge No. 273 Brotherhood of Locomotive Firemen & Enginemen* (Colo.) 70 P. 2d 738; *Donovan v. Travers* (Mass.) 188 N. E. 705.

Seniority rules may differ as between railroads. Seniority rules on a particular railroad need not necessarily be uniform in all respects. Due to particular local conditions or unusual circumstances a modification in the general seniority rule may be deemed necessary in the interests of the craft. But whatever the reason therefor, modifications in the general seniority rule may be made by agreement between the carrier and the craft representative. In other words, the seniority rule for a craft is that which is agreed upon between the carrier and the craft representative. So here, when the Engineers' Committee and the Carrier agreed upon the rules concerning the calling of a demoted engineer for emergency service whose home terminal was at the point where the service was required or for the use of pool engineers when the extra board was exhausted, the resultant modification, if any, in the seniority rule was entirely proper and within the rights of both the Carrier and the Engineers' Committee. Since only engineers' seniority was involved only the Engineers' Committee and the Carrier could agree thereon. When the Firemen and the Carrier by the Mediation Agreement changed these rules so as to require the calling of the senior demoted engineer wherever found they were seeking to change rules governing engineers' seniority—a matter obviously not for negotiation with the Carrier by the Firemen. We submit that when a rule has been agreed upon between the Engineers'

Committee and the Carrier concerning the exercise of engineers' seniority in the performance of services in that craft it may not be changed or modified in any respect by agreement between the Carrier and the Firemen's Committee.

In connection with their argument that Item 3 of the Mediation Agreement was intended to correct a practice at Smithville which violated the fundamental requirements of the principles of seniority, the Firemen claim that under the engineers' rule the normal earnings of some of the pool engineers were greatly swelled. This claim is not supported by any reference to the evidence, and, in any event, does not infringe firemen's rights. They claim that Item 3 is justified because the total mileage allotted to the pool remained unchanged. But if it be true that some engineers might have had their earnings increased over the average such fact would not have been ground for complaint of any kind so long as the average of the earnings or mileage of all engineers made in the pool did not exceed the allowable maximum. Unless the average mileage for a given period of all of the men working in the pool reaches or exceeds the maximum, every demoted engineer, who is called in when the extra board is exhausted, takes away from the mileage available to pool engineers the amount of mileage which he runs in that emergency. Hence the earnings to which the engineers in the pool as a group are entitled are decreased by the amount of the earnings of the emergency engineers. Since the reason for the special rule at Smithville was that the engineers in the pool were not making their maximum mileage (R. 146-7) there is no ground for the claim that under the principle of seniority or under mileage regulations demoted engineers should be "accorded the opportunity" of performing service which had been allotted by the engineers to the pool engineers.

The statement of the Firemen (Brief, p. 13) that none of the three rules comprising the Mediation Agreement

regulates in the slightest degree the wages or working conditions applicable to engineers is patently untrue, as is shown herein and in our opening brief (pp. 51-63).

There is no Interest of the Firemen's Craft in Rules Concerning Performance of Services in the Engineers' Craft or Concerning Entry Thereinto or Removal Therefrom Which Entitles or Permits the Firemen's Committee to Treat or Contract With the Carrier Concerning Such Rules.

Neither the Carrier nor the Firemen's Committee in their answering briefs question the fact that there are two separate crafts. Both take the position that in entering into the Mediation Agreement the Firemen did not represent the engineers' craft but represented only the firemen's craft. The purported justification is that the Firemen are "interested" in the engineers' rules involved in the Mediation Agreement.

We think that the discussion by the Carrier's counsel concerning the Firemen's interest in the rules included in the Mediation Agreement is rather completely circumscribed by the position of the Carrier itself, where, as shown in our opening brief (pp. 15-19, 60-63), the Carrier definitely aligned itself with the view that the rules of the Mediation Agreement involve the service of engineers and not the service of firemen, and that the Carrier under the Railway Labor Act had the duty to treat only with the Engineers' Committee concerning them. "Interest" in a rule of the engineers' craft, in the sense that firemen may be affected thereby in connection with their desire for promotion to engineers' job or, as the Carrier puts it, in their desire to move from the left to the right side of the cab, which, as we understand, is the sense in which the word "interest" is used in the Carrier's brief, is not, as we have shown in our opening brief, such an interest as qualifies the firemen's craft to make the rules governing entry into the engineers' craft or the performance of services therein.

Reference is made by the Carrier (Brief p. 25) to the firemen's interest in the promotion rules in the Firemen's Schedule (R. 220-224). It will be noted that they provide for the qualification and eligibility for service as engineers. They do not purport to fix the time when actual promotion to engineer will take place, or when the establishment of a date of seniority as an engineer will be made. It is the Engineers' position, of course, that the Firemen cannot, by rules in their Schedule, fix the conditions under which firemen who have qualified themselves for promotion shall enter into the engineers' craft. Entry into the engineers' craft, whether upon original promotion or return from demotion or for service as emergency engineer, or otherwise, is to be determined under rules made between the Carrier and the Engineers. The Engineers are not here contending for the right to prevent the Carrier from agreeing with the Firemen that qualified firemen shall be eligible for employment as engineers if, as and when the services of additional engineers are needed. In the absence of contract to the contrary, the Carrier may employ whom it will for services as engineer. But the performance of services as an engineer is the exercise of engineers' seniority, and the rules governing the times when and under which engineers' seniority may be exercised are for agreement exclusively between the Engineers and the Carrier. The Engineers do insist that they alone have the right to agree with the Carrier on the rules as to when the promotion, or establishment of the engineers' date, shall occur by the performance of services as an engineer, and as to when additional engineers are to be placed upon the engineers' working lists.

There is no anomaly (Carrier's brief p. 24) in the position of the Engineers' Committee in this case growing out of the fact that there is in the Engineers' Schedule (Plaintiff's Exhibit 1, R. 96, 97; Article 44(a), R. 102) a provision to the effect that demoted engineers may displace junior

firemen, which provision is substantially identical with a provision in the Firemen's Schedule (Defendant's Exhibit 1, R. 214, Article 49(a), R. 218). Article 44(a) of the Engineers' Schedule was placed therein before the enactment of the Railway Labor Act. Prior to the 1934 amendment of the Act there was no legal requirement that the Carrier should treat and bargain only with the recognized craft representative concerning the rules governing its craft. Both the Engineers' and the Firemen's Schedules were entered into in 1918 while the Chicago Joint Agreement (hereinafter discussed) between the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen was in effect. Each Schedule contained some provisions which relate to the other craft. But any and all provisions in either of the Schedules at the time the 1934 amendments become effective which conflict with such amendments must yield thereto. *Brotherhood of Railway Shopcrafts v. Lowden*, 86 F. 2d 458, 461 (Cert. denied, 300 U. S. 659). But irrespective of provisions which may be found in either Schedule concerning the other craft, it has been and is the position of the Engineers' Committee in this litigation that under the provisions of §2, Fourth, of the Railway Labor Act, as construed in the *Virginian R. Co.* case, *supra*, each craft has the exclusive right to contract with the Carrier for all of the rules governing its craft. It is clear, therefore, that the Engineers' Committee is not in an anomalous or inconsistent position concerning its contention that it has the exclusive right to bargain for all of the rules governing the engineers' craft.

It is argued by the Firemen (Brief pp. 34-37) that, although the crafts are separate and admittedly there are fields of exclusive jurisdiction belonging to each of the crafts, there is also a field of joint interest or overlapping jurisdiction between the two crafts. It is said that the matters of joint concern or overlapping jurisdiction are

limited to three (Brief p. 34): (1) The entrance of firemen into the engineers' craft through promotion; (2) the terms and conditions under which furloughed (demoted) engineers will be returned to firing service; and (3) the terms and conditions under which furloughed (demoted) engineers will be removed from firing service and returned to work as engineers. To support this contention of a field of overlapping interest the Firemen's Committee places much reliance upon the agreement known as the Chicago Joint Agreement (Third party Defendant's Exhibits 4, 5 and 6, R. 232, 233-254) entered into between the Brotherhood of Locomotive Engineers and Brotherhood of Locomotive Firemen and Enginemen. It is argued, among other things, that, since in that Agreement the two Brotherhoods had formulated rules relating to the handling of the three matters above enumerated, they had recognized or agreed that there was a field of overlapping jurisdiction between the two crafts concerning them. We submit that the argument is not well founded, and that the Chicago Joint Agreement does not support it. That Agreement does not contain any acknowledgment that either craft had any right, jurisdictional or otherwise, or interest, in the other. On the contrary, it shows that the Brotherhoods expressly admitted that the crafts and their jurisdictions are separate and distinct. It was entered into in the course of conflict between the two crafts and not in a harmony of acknowledgment that either craft had an interest or jurisdiction in the other. It recognized that there was conflict concerning various matters between the two separate crafts, and it was entered into for the purpose of trying to settle amicably the clashes that were bound to occur. It was in the nature of a "noble experiment." First entered into in 1913 (R. 233), its impracticalities and its inability to solve the difficulties were discovered, and it was revised in 1918 (R. 237), and again in 1923 (R. 244), in attempts to make it workable. It was abrogated in 1927

by the Brotherhood of Locomotive Engineers because its futility had been more than proved.

That the Brotherhoods, in the Chicago Joint Agreement, neither admitted nor contemplated that there was a field of overlapping interest or jurisdiction between the two crafts is demonstrated by the first article thereof as follows:

> "We affirm the right to make and interpret contracts, rules, rates and working agreements for locomotive engineers shall be vested in the regularly constituted committee of the Brotherhood of Locomotive Engineers, and, conversely, the right to make and interpret contracts, rules, rates and working agreements for locomotive firemen and hostlers shall be vested in the Brotherhood of Locomotive Firemen and Enginemen." (R. 244.)

Clearly it appears therefrom that each recognized the separate jurisdiction of the other, and that the jurisdiction of the engineers' committees covered the field of contracts, rules, rates and working agreements for locomotive engineers, and that the jurisdiction of firemen's committees covered similar matters concerning firemen. The recognition and agreement of the separateness of the crafts and their respective jurisdictions was the fundamental and basic principle underlying the entire Agreement. Everything that follows, including the provisions dealing with the promotion of firemen to become engineers, the demotion of engineers to serve as firemen, and the conditions under which such demoted engineers would be returned to service as engineers, was entered into and agreed upon in the recognition of the fact that there were two separate crafts each with its own jurisdiction. There is no statement to be found in that Agreement which admits, or in any way recognizes, that there was a field of overlapping interest between the two crafts as to which both crafts had jurisdiction. The effort made by the two Brotherhoods in entering into the Agreement to compose the clashes and

conflicts arising between the two crafts cannot be tortured into an admission or recognition that either organization conceded that there was an intermediate field or zone in which both crafts had jurisdiction.

Under the contention of the Engineers' Committee in this case respecting the exclusive right of craft representation, it appears that the three subjects as to which overlapping jurisdiction is claimed by the Firemen, namely, entrance of firemen into the engineers' craft through promotion, terms and conditions under which demoted engineers will be returned to firing service, and terms and conditions under which demoted engineers are removed from firing service and returned to work as engineers, involve some matters which are within the exclusive jurisdiction of the engineers' craft and others within the exclusive jurisdiction of the firemen's craft. Thus, entry into the engineers' craft upon promotion from the firemen's craft, and the re-entry of demoted engineers into the engineers' craft after having been removed from firing service, are governed by engineers' craft rules. Re-entry into firing service, after demotion from service as engineers, and removal from firing service, are governed by firemen's rules. The Firemen may control the rules and conditions under which demoted engineers may enter, remain in, and leave the firemen's craft, but they cannot make rules which require that upon removal from the firemen's craft a demoted engineer shall be returned to service as engineer, or that firemen who are qualified for promotion to take positions as engineers shall be required, under conditions named by the Firemen, to enter the craft of engineers. The decision of the Circuit Court of Appeals for the Ninth Circuit in *General Committee of Adjustment of the Brotherhood of Locomotive Engineers, etc. v. Southern Pacific Co. et al.*, 132 F. 2d 194, supports these contentions. This position of the Engineers, we submit, is equitable and fair to all concerned. It is one of correlative rights for the two crafts.

Under it, the Engineers have the exclusive bargaining rights as to their craft and the Firemen have the exclusive rights as to their craft.

The fairness to both crafts of this position is not lessened by the claim of the Firemen (Brief, pp. 20, 21) that the interests of these crafts lie in opposite directions. While it is asserted, on the one hand, that the interests of the engineers lie in the employment at all times of as few engineers as possible,[1] and that the attainment of this objective requires an advancement of the maximum mileage limitations that have been applicable to engineers or the elimination of these limitations, and that, on the other hand, it is to the interest of the firemen's craft that the carrier be induced to support principles directly opposed to the asserted interests of the engineers, it will be noted that no claim is made that the Engineers are attempting or intend to change any mileage regulations. Should there be any attempted abuses either by firemen or by engineers arising out of the asserted different interests of the engineers and firemen concerning the spreading of engineers' work or the return of demoted engineers to firing service, each craft, under the position contended for by the engineers, has ample power to prevent encroachments by the other under the rules governing entry or re-entry into its own craft.

It is claimed by the Firemen, with respect to the three matters involved in their asserted field of overlapping jurisdiction, that the interest of the firemen therein is direct, immediate and financial. Direct, because of a lowering of firemen in their positions on the firemen's working lists when demoted engineers displace or "bump" firemen or

---

[1] This is not true, for it is obviously to the interest of the engineers' craft that the amount of work available to the craft be divided among the members thereof so as to employ as great a number of engineers as is consistent with reasonable earnings for all.

in the improvement of the firemen's positions when demoted engineers return to work as engineers; immediate, because such situation may occur at any time; and financial, because a change in the fireman's position has an effect on his wages. We do not agree with this contention, because under the position of the engineers aforesaid the matter of entry of demoted engineers into the craft, and their removal therefrom, is for the control of the firemen's craft under its own rules. But assuming for the sake of argument that the firemen are affected directly or immediately or financially by the operation of the engineers' rules, it would not give to the Firemen the right to bargain for rules governing the engineers' craft. The interest of the minority of the craft of engineers is direct, immediate, and financial. But the minority has no right to bargain with respect to the rules which affect them directly, immediately and financially. No interest of men in the firemen's craft in engineers' craft rules can be as primary, direct and immediate as the interest of those actually employed in the craft. What the Firemen are contending for would have the effect of giving to the firemen's craft the right to bargain collectively for rules of the engineers' craft as to which the minority craft interest has no right of bargaining whatever.

Legally speaking, these two crafts are entirely separate and independent. Neither the fact that the carrier obtains most of its engineers from the craft of firemen, nor the fact that when engineers are demoted from service as such they re-enter into service in the firemen's craft, affects the separateness of the crafts. Such an arrangement may be one of practical convenience, but it is not a matter of legal significance. The fact that firemen desire promotion to the engineers' craft does not give the Firemen's Committee the right to make rules concerning entry thereinto; nor does the desire of engineers, upon demotion, to enter service in the firemen's craft give to

the Engineers' Committee the right to make the rules governing the entry into firing service. Persons working in one craft may desire to obtain employment in another, or persons not presently employed may seek employment in a craft, but, as we have pointed out in our opening brief, it is the craft into which admission may be desired, not those seeking admission thereto, which makes the conditions of entry thereinto. Neither personal interest, minority interest, economic interest, immediate, direct, or financial interest, is the criterion by which the right to bargain collectively for a craft is determined. The only interest which is established by the Railway Labor Act as the criterion for determining the right of collective bargaining concerning the craft rules is the interest of the majority of the craft.

The Mediation Agreement Does Not Import an Administrative Construction of the Railway Labor Act.

The Mediation Agreement is between the Carrier and the Firemen. The fact that it was made in the presence of two members of the National Mediation Board and was subscribed by them bestows no presumption of *prima facie* legality thereon. The primary function of the National Mediation Board is to endeavor to bring employees and carriers to agreement by mediation processes. The function of deciding questions of law has not been conferred upon it. What its views on the law may be, if they are expressed, have no binding effect. In any event, no views were expressed in this matter. When they appeared before the Board, the Carrier and the Firemen had opposing views concerning the right of the parties to enter into the Mediation Agreement, and in such situation the members of the Mediation Board could have acted as mediator without indicating any view as to the legality of either contention leaving the question of legality to be determined by the courts, where it belongs. We submit that the functioning

of the Mediation Board in the mediation process does not import any construction of the Act.

The administrative construction which courts recognize as of legal significance is such as originates in a bureau, department, or other instrumentality charged with the duty of administering and enforcing the law and rendering enforceable decisions in connection therewith, as for example, the Interstate Commerce Commission. Such a body has special facilities for investigation and administration and is empowered to render enforceable orders. Settled construction, the result of studied deliberation based upon "informed experience" over a period of years (*Illinois Central R. Co. v. I. C. C.*, 206 U. S. 441, 454) gives rise to administrative constructions which the courts recognize as entitled to great weight, and which will not be overturned except for cogent reasons. *United States v. Chicago, North Shore & Milwaukee R. R. Co.*, 288 U. S. 1, 13. We submit that nothing in the functioning of the Mediation Board in this matter even approaches the character of administrative construction which the courts consider as influential.

Conclusion.

For the reasons advanced herein and in our opening brief, the judgment of the Circuit Court of Appeals should be reversed and an appropriate declaratory decree should be entered.

Respectfully submitted,

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FILE COPY

In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 23

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, AN UNINCORPORATED ASSOCIATION, PETITIONER,

vs.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, *et al.*

ON WRIT OF CERTIORARI TO
THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

BRIEF FOR RESPONDENTS,

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, and MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS.

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In the Supreme Court of the United States

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GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, AN UNINCORPORATED ASSOCIATION, PETITIONER,

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OPINIONS BELOW.

The opinion of the United States Circuit Court of Appeals for the Fifth Circuit (R. 295-300) is reported in 132 F. 2d 91. The opinion of the United States District Court for the Northern District of Texas (R. 70-77) is not reported.

JURISDICTION.

The jurisdiction of this Court is invoked under Sec. 240 (a) of the Judicial Code, as amended by the Act of February 13, 1935.

STATUTES INVOLVED.

The statutes involved are:

The Railway Labor Act (45 U. S. C. A., Secs. 151-163), which is set out in Appendix A;

The Declaratory Judgment Act (28 U. S. C. A., Sec. 40), which is set out in Appendix B;

The Norris-LaGuardia Act (29 U. S. C. A., Secs. 105-115), which is set out in Appendix C.

CONCISE STATEMENT OF THE CASE

For brevity's sake, the General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad Company, an unincorporated association, Petitioner, will be referred to as "Engineers' Committee"; the Missouri-Kansas-Texas Railroad Company, and the Missouri-Kansas-Texas Railroad Company of Texas, will be referred to as the "Carrier"; and the General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen of the Missouri-Kansas-Texas Railroads will be referred to as the "Firemen's Committee".

The Engineers' Committee is the representative of the "craft" or "class" of engineers on carriers' lines. The Firemen's Committee is the representative of the "craft" or "class" of firemen on carriers' lines.

This case involves the right of the Carrier to negotiate with the Firemen's Committee concerning *disputes* between the Carrier and the Firemen's Committee, and the validity of an agreement reached as result of such negotiations concerning matters in which both have a bona fide *interest*. The *dispute* in question involves both

the Engineers' Committee and the Firemen's Committee and both Committees have a bona fide *interest* in such *dispute*.

Specifically, this case involves *how*, *when* and *under what conditions* in certain specific instances a man shall be moved from the left to the right side of a locomotive and vice-versa. Clearly, both men are interested in such movement.

Prior to the Mediation Agreement (the settling of the *dispute* between the Carrier and the Firemen's Committee), the Engineers' Committee, with the consent of the Carrier, said *how*, *when*, and *under what conditions* the move would be made (R. 116, 117, 119). The Firemen's Committee complained because it, the Firemen's Committee, had no say in such movement. A *dispute* arose between the Firemen's Committee and the Carrier (R. 191-192). The Carrier tried to settle the *dispute* by conferring with both the Engineers' Committee and the Firemen's Committee but without success (R. 193). The Carrier then endeavored to invoke the services of the Mediation Board to get the *dispute* settled, but that Board would not take jurisdiction (R. 193).

The Carrier then asked both the Engineers' Committee and the Firemen's Committee to handle the *dispute* with the Railway Adjustment Board, and neither organization would avail itself of that Board (R. 193). Again the Carrier tried to get the two together, offering to put into effect any reasonable arrangement mutually satisfactory which did not penalize the Carrier, but to no avail (R. 193).

The Firemen's Committee then asked for mediation (R. 194) and the Carrier tried to get the Engineers' Committee to mediate, but it refused (R. 196). The

Carrier then sought to arbitrate the *dispute*, but the Engineers' Committee declined arbitration (R. 196). All efforts failing to compose the *dispute* with Engineers' Committee, the Carrier, after insistence by the Board, agreed to the Mediation Agreement with the Firemen's Committee (R. 196), and cancelled its arrangement with the Engineers' Committee over the *dispated* issue, in accordance with the Railway Labor Act (R. 196, 197).

Thereafter, the Engineers' Committee brought this suit under the Declaratory Judgment Act, contending that the Mediation Agreement between the Carrier and the Firemen's Committee was illegal because in violation of the Railway Labor Act, which is an act involving interstate commerce; asked that it be adjudicated the sole representative of the craft of engineers, with exclusive rights to negotiate, bargain, and agree collectively with the Carrier as to pay, rules and working conditions of locomotive engineers (R. 33, 34), and alleged that the Mediation Agreement infringed such rights.

The Carrier contended that its action in making the mediation agreement was valid; that both the Engineers' Committee and the Firemen's Committee were *interested* in the *dispute*; and brought in the Firemen's Committee and prayed for declaratory judgment for the guidance of all parties concerning the *dispute*. The Carrier further contended that since both engineers and firemen were *interested* in the *dispute*, it was the duty of the Carrier under the Railway Labor Act to treat with both the Engineers' Committee and the Firemen's Committee, and to exert every reasonable effort to make an agreement for the settlement of such *dispute*, but that it should not be penalized in so doing. The Carrier contended that it had exerted every reasonable effort to settle the *dispute* with both parties but that it failed, and having failed

the Carrier was free to provide for the service involved through the contract it made with the firemen, or by the promulgation of reasonable rules and regulations providing for such service.

The Firemen's Committee contended that the court had no jurisdiction and was without power to declare the Mediation Agreement void, and, in the alternative, that the Mediation Agreement was valid, and sought general relief.

The *validity* of the agreement made by the Carrier with the Firemen's Committee is the issue involved in this lawsuit.

QUESTIONS PRESENTED

This Court has requested counsel to discuss in their briefs and on oral argument the following questions, so far as applicable:

(1) Whether resort to the Declaratory Judgment procedure is appropriate in the circumstances;

(2) Whether any questions of the construction of the contracts involved are governed by state or by federal law;

(3) What bearing, if any, the Norris-LaGuardia Act has on the propriety of granting the relief sought.

QUESTIONS PRESENTED UPON THE MERITS OF THIS CASE

The questions presented upon the merits of this case are:

(1) Is a fireman interested in being an engineer?

(2) Having placed the duty upon the Carrier to

exert every reasonable effort to settle disputes with employees in order to avoid any interruption to commerce or to the operation of any carrier, does the Railway Labor Act prevent a carrier from doing just that very thing?

(3) The Railway Labor Act having required a carrier to settle disputes with its employees interested in such disputes, are arrangements for settlement of such disputes made by the carrier with the employees interested in the dispute illegal?

(4) Can there be a bona fide dispute between the carrier and its employees within the contemplation of the Railway Labor Act unless both are interested?

(5) If certain employees have a bona fide interest in a dispute, may the representative of the craft to which such employees belong represent such craft in settling such dispute?

(6) The Railway Labor Act having made it the duty of the carrier to confer with the representative of a class of employees having an interest in a dispute, is it unlawful for the carrier and such representative to make an arrangement for the settlement of such dispute?

(7) If the Firemen have an interest in *how*, *when*, and *under what conditions* a man may be moved from the left side of a locomotive to the right side thereof, and vice versa, and a dispute arises between such man and the carrier over *how*, *when* and *under what conditions* such movement may be made, does the Railway Labor Act forbid the man or his representative from conferring with the carrier and making an arrangement for the settlement of such dispute?

(8) Where both engineers and firemen have a sub-

stantial interest in a given service and are unwilling to reach a fair and just agreement as to such service with the carrier, is not the carrier then free to provide such service necessary for commerce and operation of the carrier in the most practical manner under the Railway Labor Act?

(9) Can this Court set aside the findings of fact as found by the trial court and concurred in by the Circuit Court of Appeals when such findings have support in the evidence?

SUMMARY OF THE ARGUMENT

Resort to Declaratory Judgment relief is appropriate in this case because there is a substantial definite controversy involving the construction and application of the Railway Labor Act, of vital public interest affecting commerce and the operation of the Carrier. There is no prohibition in the Railway Labor Act or any other federal law for granting such relief.

The construction of a contract is not involved, but even if there were questions of the construction of contracts involved, federal law, and not state law, would govern, because it is alleged that the Railway Labor Act condemns, as unlawful, the Mediation Agreement made by the Carrier and the Firemen's Committee, the answer to which must be reached from the statute and the federal policy involved.

The Norris-LaGuardia Act has no bearing upon the propriety of granting a declaratory judgment, because no injunction has been sought.

The Railway Labor Act having made it the duty of the Carrier and its employees interested in a dispute

to confer and, if possible, settle such dispute, whether growing out of the application of contracts, or otherwise, and the trial court having found as a fact that the Carrier and the firemen are interested in the dispute involved in this case, which finding was concurred in by the Circuit Court of Appeals, the Mediation Agreement is valid and complete, and should be so declared by this Court.

ARGUMENT.

I.

RESORT TO DECLARATORY JUDGMENT PROCEDURE IS APPROPRIATE IN THE CIRCUMSTANCES PRESENTED IN THIS CASE.

Clearly, resort to declaratory judgment procedure is appropriate in this case. The Declaratory Judgment Act provides (28 U. S. C. A. 400):

> "(1) In cases of actual controversy * * * the Courts of the United States shall have power, upon petition * * * or other appropriate pleadings, to declare rights * * * of any interested party petitioning for such declaration * * *.
>
> "(2) * * * The application shall be by petition to a court having jurisdiction to grant the relief * * *."

A. Concerning Jurisdiction of the Federal Court.

In determining whether resort to declaratory judgment procedure is appropriate, it is, of course, necessary to first inquire whether the federal court has jurisdiction of the suit. The Circuit Court of Appeals took the position that the questions to be determined in this case were governed by the Railway Labor Act, a law of the United States, which is also a law regulating commerce.

and that therefore, jurisdiction exists under 28 U. S. C. A., 41 (8), which law provides:

> "The district court shall have original jurisdiction as follows:
>
> (8) Suits for violation of interstate commerce laws. Eight. Of all suits and proceedings arising under any law regulating commerce."

The allegations in the complaint govern the question of whether the Court has jurisdiction. The complaint must be taken as true in determining the question of jurisdiction. The claim may be ultimately dismissed, but this does not mean that the court lacked jurisdiction.

In *Fair, Appt. v. Kohler Die & Specialty Co., 228 U. S. 716*, this Court, in discussing the matter of jurisdiction of the federal court, said:

> "But if the plaintiff really makes a substantial claim under an act of congress, there is jurisdiction whether the claim ultimately be held good or bad."

The Supreme Court held that jurisdiction existed because the claim was based upon a federal law.

In the instant case, the Engineers' Committee alleged a substantial claim or right to which it claims it is entitled to protection under the Railway Labor Act (R. 33). Engineers' Committee alleged the violation of that right (R. 26, 33). Engineers' Committee alleged the exclusive right to negotiate with the Carrier concerning a matter which directly involved the pay of the Engineers. This is a valuable right. Engineers' Committee alleged this exclusive right, which admittedly is of value, has been infringed upon by the Carrier and the firemen, in violation of the Railway Labor Act.

It has been held by this Court that an employee can

sue a carrier to protect rights given him through a collective bargaining contract made by the employee's representative with the Carrier (*Moore v. Illinois Central R. Co., 312 U. S. 630*); It thereby recognized that rights under such contract were entitled to legal protection. If the employee can sue under the contract, it seems that his representative could do likewise.

The construction and application of the Railway Labor Act is clearly involved in the complaint of the Engineers' Committee. It is contended in the petition that under a proper construction and application of the Act, the Engineers' Committee has the exclusive right to confer and contract with the Carrier concerning the matter in dispute. The complaint alleges that the Firemen's Committee has no right to treat and agree with the Carrier concerning the matter in dispute, under a proper construction and application of the Act.

As to the prohibition which Engineers' Committee contends is contained in the Railway Labor Act, the Supreme Court of the United States had this to say in the case of *T. & N. O. R. Co., et al v. Brotherhood of Ry. and Steamship Clerks, etc., et al, 281 U. S. 548*, involving the 1926 Act:

> "If Congress intended that the prohibition, as thus construed, should be enforced, the courts would encounter no difficulty in fulfilling its purpose, as the present suit demonstrates."

In the T. & N. O. case, the Brotherhood of Clerks sued for an injunction against the T. & N. O., to restrain the Railroad from interfering with the clerical employees in the matter of their organization and designation of representatives for the purpose of the Railway Labor Act. The Court said:

"The controversy is with respect to the construction, validity, and application of this statutory provision [meaning Railway Labor Act]."

B. Concerning Propriety of Declaratory Judgment Procedure.

The Court having jurisdiction, the test as to whether a declaratory judgment by the Court is appropriate would depend upon whether there was "an actual controversy" of sufficient public interest as, in the Court's sound discretion, such judgment should be rendered, and there is no prohibition for a declaratory judgment under the federal law. There appears to be nothing in the Railway Labor Act which would forbid the granting of declaratory relief. Nor do we believe any other federal law forbids such relief.

An examination of the facts in this case conclusively shows "an actual controversy" between the parties. Commencing in 1937, a controversy arose between the Firemen's Committee and the Carrier involving the subject-matter of this suit, and continued more or less unabated as a very real thing, including a threatened "strike", until the Mediation Agreement was made in 1940 between the Carrier and the Firemen's Committee (R. 191, 192, 193, 194). From 1939 down to date, there has been a real controversy between the Engineers' Committee and the Carrier concerning the subject-matter of this suit (R. 193, 194, 196).

There is a real, actual, definite and concrete dispute involved in this suit. It involves the transferring of firemen to work as engineers in certain instances. The Engineers' Committee says it has the exclusive right to treat and agree with the Carrier concerning such transfer by virtue of the Railway Labor Act. The Carrier

Addition by us.

and the Firemen's Committee say that the firemen are interested in the dispute and that there is an overlapping of interest between engineers and firemen, and that under the Railway Labor Act, the Carrier must also treat with the Firemen's Committee and agree, if possible, concerning the dispute.

The Carrier has used its best efforts to compose the controversy. The Railway Labor Act makes no provisions for one Union to treat with another and settle disputes in which they are interested. We do not know why the Congress failed to make such provision. It seems to the Carrier that the Engineers' Committee and the Firemen's Committee should be able to confer and settle a dispute in which there is a mutual interest, in a manner which would also be fair to the Carrier.

If the facts had warranted it, the Engineers' Committee would have been entitled to injunctive relief (*Virginian Ry. Co. v. System Federation No. 40, 300 U. S. 515*). The right of a representative to bargain exclusively for employees in a particular craft is a valuable right and entitled to legal protection (*T. & N. O. R. Co. v. Brotherhood of Ry. Clerks, 281 U. S. 548; Virginian Ry. Co. v. System Federation No. 40, 300 U. S. 515*). Clearly if the dispute is one which could warrant injunctive relief, a controversy within the meaning of the Declaratory Judgment Act exists.

In *Aetna Life Ins. Co. of Hartford, Conn. v. Haworth, 300 U. S. 227*, it is held that in order for declaratory judgment relief to be proper, there must be adverse legal interests; a real and substantial controversy in which a conclusive decree may be rendered; that it is not essential that an award of process or payment of damages be sought; and that it is not essential an in-

junction be sought or that irreparable injury is threatened. Certainly under this decision, declaratory relief is appropriate in the instant case.

Adams et al v. New York C. & St. L. R. Co., 121 F. 2nd 808, Seventh Circuit, directly involved resort to the Declaratory Judgment Act for the purpose of defining seniority rights of employees regardless of remedies available to such employees before administrative tribunals, as provided by the Railway Labor Act. One question involved in that case was whether the Railway Labor Act, in providing specifically for an administrative forum to determine controversies like the one here presented, impliedly deprived the Federal District Court of jurisdiction, which it otherwise would have had under the diversity of citizenship statute. In holding that the Railway Labor Act did not deprive the Federal District Court of jurisdiction, the following language was used:

> "Upon the merits, in view of the decision of the United States Supreme Court, in Earl Moore v. Illinois Central Railroad Company, 61 S. Ct. 754, 85 L. Ed. —, decided March 31, 1941, the order of the District Court sustaining the defendant's motion to dismiss plaintiffs' complaint, was erroneous; the complaint should stand. In view of the Supreme Court's clarifying language as to the intended scope of the Railway Labor Act, 45 U. S. C. A. Sec. 151 et seq., we can definitely state that the employees' action may be brought, at their election, either in a court, or settled by the administrative remedies prescribed by said Act."

As to whether the Court should exercise its jurisdiction to declare the rights of the parties, there seems little doubt. The controversy is over a matter of vital public interest. Over a long period, the Carrier has been unable

to compose the differences involved. The Engineers' Committee has indicated that it should and will abide a judicial decree settling this controversy (Engineers' Committee Brief, 32). Failure to declare the rights of the parties will lead to continued expense, confusion and uncertainty such as may materially interrupt commerce and the operation of the Carrier. Certainly a failure of the Court to declare the rights of the parties will throw the Carrier back in a dilemma and both Committees will be asserting an exclusive right to confer with the Carrier concerning the matter in dispute.

Finally, there is nothing in the Railway Labor Act to prohibit declaratory relief. *Washington Terminal Co. v. Boswell*, 124 F. 2nd. 235; affirmed by an equally divided court, June 14, 1943 (No. 28, 1942 Term), holds the Carrier is not entitled to declaratory relief after case has been taken and decided by an Adjustment Board. The reasons for denying relief in the Boswell case do not appear here.

The question raised by Judge Minton in the dissenting opinion in *Toledo, P. & W. R. R. v. Brotherhood of R. R. Trainmen, etc.*, 132 F. 2d 265, 274, as to whether or not all recourse afforded by the Railway Labor Act had been sought before coming into court is, in our opinion, sufficiently answered by the testimony of Mr. Grace in the instant case (R. 200). Mr. Grace testified that if the matter had gone to an Emergency Board, the Engineers would not have been bound by the findings of such Board because they were not a party thereto, and that since the Board could have found that the Firemen's Committee was correct in its contention, an unjust penalty against the Carrier could have easily resulted.

Moore v. Illinois Central R. Co., 312 U. S. 630, holds

that the Board's jurisdiction is not exclusive. Moore was allowed to sue the carrier upon a contract made by the representative of his craft without first exhausting administrative remedies granted by the Railway Labor Act. The majority opinion in the Boswell case recognizes that no conflict exists between the two holdings.

The dispute involved in the instant case is over the validity of an agreement, not over the interpretation or application of an agreement. Therefore, the dispute in question does not come within the jurisdiction of the Adjustment Board. No provision is made in the Railway Labor Act for the determination of the validity of a contract. There is no machinery provided in the Act to settle the legal issues involved in the present case.

II.

WHETHER ANY QUESTIONS OF THE CONSTRUCTION OF THE CONTRACT INVOLVED ARE GOVERNED BY STATE OR BY FEDERAL LAW.

The construction of contracts is not involved in this case. If the construction of contracts were involved, federal and not state law should govern.

The petition of the Engineers' Committee alleged that the agreement made by the Carrier and the Firemen's Committee was in violation of the Railway Labor Act (R. 26, 27). The Engineers' Committee demanded that the agreement be declared invalid, (R. 34), because unlawful under said Act. The construction and application of the Act are involved and we think this clearly presents a question of federal law.

Erie R. Co. v. Tompkins, 304 U. S. 64, did not involve the construction and application of an Act of Congress. It involved the common law of Pennsylvania

as declared by the Supreme Court of that state, and therefore does not apply to the instant case.

Where the construction and application of a federal statute is in question, this Court has held that the rule of the Erie case is not applicable and that federal law, not state law, governs. *Prudence Realization Corp. v. Geist*, 316 U. S. 89, 95, and the cases there cited. *Baltimore & O. R. Co. v. Kepner*, 314 U. S. 44.

In *Sola Electric Co. v. Jefferson Electric Co.*, 63 S. Ct. 172, 173, 174, this Court held that

> "the prohibition of a federal statute may not be set at naught, or its benefits denied, by state statutes or state common law rules. In such a case our decision is not controlled by Erie Railroad v. Tompkins * * There we followed state law because it was the law to be applied in the federal courts. But the doctrine of that case is inapplicable to those areas of judicial decision within which the policy of the law is so dominated by the sweep of federal statutes that legal relations which they effect must be deemed governed by federal law having its source in those statutes, rather than by local law. * * * When a federal statute condemns an act as unlawful the extent and nature of the legal consequences of the condemnation, though left by the statute to judicial determination, are nevertheless federal questions, the answers to which are to be derived from the statute and the federal policy which it has adopted. To the federal statute and policy, conflicting state law and policy must yield. * * *".

Irving Trust Co. v. Day, 314 U. S. 556, 561, announces the rule as follows:

> "When this Court is asked to invalidate a state statute upon the ground that it impairs the obligation of a contract, the existence of the contract and

> the nature and extent of its obligation become federal questions for the purposes of determining whether they are within the scope and meaning of the Federal Constitution, and for such purposes finality cannot be accorded to the views of a state court * * *"

The Texas courts consider themselves bound by the decisions of this Court construing and applying the Railway Labor Act. *Watson v. M-K-T R. Co. of Texas*, 173 S. W. 2d 357, 361, writ of error refused for want of merit, by Supreme Court of Texas.

If the law of the various states should control the question here involved, it is conceivable that a different decision would be reached in each state where such a controversy might arise. Such a controversy would doubtless arise in each state in which the Carrier operates. A situation of this kind would of necessity "interrupt commerce" and materially "affect the operation" of railroads.

III.

THE NORRIS-LaGUARDIA ACT DOES NOT PREVENT DECLARATORY JUDGMENT RELIEF IN THIS CASE.

Injunctive relief has not been sought in this suit. Only a declaration of the rights of the parties and an adjudication as to the validity of the Mediation Agreement are involved. Even though injunctive relief had been sought, the Norris-LaGuardia Act would not have prohibited it.

The Engineers' Committee complained that it had the exclusive right to confer and settle the dispute in question. The petition alleges that in violation of the Railway Labor Act, the Carrier and the Firemen's Committee infringed that exclusive right by making the Mediation Agreement, and that therefore, the same is

invalid (R. 33). Both the Carrier and the Firemen's Committee asserted the validity of the agreement under the Act.

This Court permitted injunctive relief in *Virginian R. Co. v. System Federation No. 40, 300 U. S. 515, 548, 549.*

It is held in the Virginian case that:

> "It suffices to say that the Norris-LaGuardia Act can affect the present decree only so far as its provisions are found not to conflict with those of section 2, Ninth, of the Railway Labor Act (45 U. S. C. A., Sec. 152, subd. 9), authorizing the relief which has been granted. Such provisions cannot be rendered nugatory by the earlier and more general provisions of the Norris-LaGuardia Act."

IV.

ARGUMENT ON THE MERITS

A. Concerning Findings of Fact Made by the Trial Court Concurred In by the Circuit Court of Appeals.

It must be borne in mind that upon the trial of this case, certain facts were in dispute. The case was tried without a jury and the trial court found the facts. The question of "interest" and the employees involved in such "interest" was one of the chief matters in controversy.

The findings of fact made by the trial court have the force and effect of a verdict by a jury. *Williams v. Planters' & Mechanics' National Bank, 45 S. W. 699.* No attack has been made upon such findings by the Engineers' Committee. It is not contended that there is no support in the evidence for the findings made by the trial court. Where there is substantial evidence to

support the "verdict", a court cannot substitute its own findings. *Strack v. Strong, 135 S. W. 2d 754*, writ of error dismissed, judgment correct, by Supreme Court of Texas.

The trial court found as a fact, among other things, that:

> "I find that the controversy between the plaintiff [Engineers' Committee] and the third party defendant [Firemen's Committee]' as set out in the pleadings, and as disclosed by the testimony, is over a matter which affects both crafts.
>
> "That the defendant [Carrier] had a right to contract with either of the crafts with reference to the questions presented in the pleadings of the parties here—that is, the passing of a man from the working lists of the Firemen to the working lists of the Engineers, and what should happen when an Engineer who was in the pool was absent, with reference to the choice of the extra man or the demoted Engineer available on the Firemen's lists, and with

"FINDINGS OF FACT.

"I.

"I find that the plaintiff has the right under the Railway Labor Act to contract for its craft.

"I find that the third party defendant has a right to contract under the Railway Labor Act for the three things set out in the act, relating to its craft.

"I find that the controversy between the plaintiff and the third party defendant, as set out in the pleadings, and as disclosed by the testimony, is over a matter that effects both crafts.

"I.

"That the defendant had a right to contract with either of the crafts with reference to the questions presented in the pleadings of the parties here, that is, the passing of a man from the working lists of the firemen to the working lists of the engineers, and what should happen when an engineer who was in the pool was absent with reference to the choice of the extra man or the demoted engineer available on the firemen's lists, and with reference to each of the three items covered by the mediation agreement of December 12, 1940." (R. 77, 78.)

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reference to each of the three items covered by the mediation agreement of December 12, 1940." (R. 77, 78.)

The Engineers' Committee pleaded that the Carrier had unlawfully dealt with the Firemen's Committee in making the Mediation Agreement concerning rules and working conditions of the craft of engineers in their services as locomotive engineers (R. 33). The Carrier pleaded that members of both crafts were interested in the dispute and offered to enter into a joint agreement with both to settle the dispute, provided it would not be penalized under such agreement (R. 16, 17). The Firemen's Committee pleaded that the time and circumstances under which firemen are assigned as engineers and return to jobs as firemen are the subjects of direct interest and concern to all members of the craft or crafts of firemen (R. 47).

Mr. Grace, vice-president and general manager of the Carrier, testified:

> "In handling the matter with the firemen * * * matters which they endeavored to make agreements with us, were matters that engineers were also involved in, and that it was a jurisdictional question, and that both organizations should attempt to dispose of it between themselves, rather than to bring the railroad a party to the disagreement, and use the railroad to whip the other organization, use the railroad as the buffer for the proceeding (R. 173)."

There being substantial evidence that both the firemen and the engineers are interested in the dispute in question, and the Court having found as a fact that both are interested, and there being pleadings to support such findings, are not the parties to this suit bound thereby?

Can the Engineers' Committee now successfully contend that the firemen are not interested in the dispute? Isn't the dispute such a one as contemplated by the Railway Labor Act? Is not this Court bound by the findings of fact made by the trial court and concurred in by the Circuit Court?

The Railway Labor Act, 45 U. S. C. A., 152, provides:

> "First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to *settle all disputes*[6], whether arising out of the application of such agreements, *or otherwise*[7], in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.
>
> "Second. All disputes between a carrier or carriers and its or their employees shall be considered, and if possible, decided with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof *interested*[8] in the dispute."

The Railway Labor Act imposes the duty, not only upon the carrier, but upon employees, to exert every reasonable effort to settle all disputes, whether arising out of contracts OR OTHERWISE in which such employees are interested. Could the Congress have been so inconsistent as to have intended that a carrier and its employees are bound to exert every reasonable effort to settle disputes arising between them in which both

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are interested, but forbid a carrier to attempt to settle disputes with the representatives of employees interested in such dispute? We think not.

Nor do we need look further than to the general purposes of the Railway Labor Act for a positive answer as to the intention of the Congress. The Railway Labor Act, 45 U. S. C. A. 151a, provides:

> "The purposes of the chapter are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; * * * (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions."

Nor do we believe that it was the intention of the Congress that the interpretation of the Railway Labor Act should be highly technical, as is contended by the Engineers' Committee and the Solicitor General. We ask, why did the Congress say "ALL DISPUTES" should be settled, if it meant, as is contended by the Engineers' Committee and the Solicitor General, that just certain particular disputes should be settled? The Act provides that, 45 U. S. C. A. 155:

> "First. The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:
>
> "(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.
>
> "(b) Any other dispute not referable to the

National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

"The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

"In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement * * *"

From 1913 to 1927, the Engineers' Committee must have believed the Firemen's Committee had an interest in the subject-matter of this suit. The Chicago joint agreement between Engineers' Committee and Firemen's Committee, among other things, provided a rule for the moving of firemen to engineers and transferring engineers back to firemen (R. 233, 234, 235, 236, 237). The interest of the firemen in the subject-matter of this suit was recognized by the Engineers' Committee by amendment (R. 237, 244). In fact, the Engineers' Committee recognized the interest of the firemen in the dispute in question up until 1927 when such agreements were cancelled by the Engineers' Committee (R. 255). One of the items in the Mediation Agreement was in effect on all railroads in the West (R. 194).

The Mediation Board must have believed the Firemen's Committee had such an interest in the dispute between the Firemen's Committee and the Carrier as to entitle the Firemen's Committee and the Carrier to confer and mediate the dispute; otherwise, it would not have proffered its services. It would not have attempted to bring the Firemen's Committee and the Carrier to agreement over the dispute. The Mediation Board approved

the mediation agreement between the Firemen's Committee and the Carrier (R. 27, 28).

Although there was substantial evidence that the firemen were interested in the dispute, and such was found as a fact by the trial court, the Engineers' Committee still contends that the Firemen's Committee is not interested. Is it likely that a dispute will arise among parties unless an interest of one or both is involved? We think the evidence shows a question involving the interest of both engineers and firemen, and that there is an overlapping of interest. The interest of both over the matter in dispute is substantial and has been recognized as such over a long period of years.

The position taken by the Engineers' Committee in this suit is anomalous. Since 1918, the engineers have had a contract with the Carrier containing the following provision:

> "Art. 44: (a) When, from any cause, it becomes necessary to reduce the number of engineers on the engineers' working list on any seniority district, those taken off may, if they so elect, displace any fireman their junior on that seniority district under the following conditions: * * *" (R. 102).

The engineers' contract with the Carrier also contains provisions concerning the promotion of firemen to engineers (R. 99, Art. 43). The engineers have not repudiated such provisions in their contract. They contend the provisions are valid and binding upon the Carrier (R. 22).

The Firemen's Committee admits the dispute involves matters in which both crafts are interested (Firemen's Committee's Brief in the Circuit Court, 29). Since

1918, the firemen have had a contract with the Carrier containing the following provision:

> "Art. 49 (a) When, from any cause, it becomes necessary to reduce the number of engineers on the engineers' working list on any seniority District, those taken off may, if they so elect, displace any firemen their junior on that seniority District under the following conditions * * * (R. 218)."

The firemen's contract with the Carrier also contains provisions concerning the promotion of firemen to engineers (Art. 58, R. 220, 221, 222, 223, 224). This contract is in full force and effect and binding upon the Carrier and the firemen. The engineers have raised no question as to the validity of such contract. The Carrier obtains all, or practically all, of its engineers from the firemen's class, and it therefore seems obvious that the firemen are interested in *how*, *when*, and *under what conditions* the firemen shall become engineers. The fireman aspires to be an engineer. That position pays more money. The work is more desirable. Some firemen work years trying to qualify as an engineer. Some try and never become engineers. The number of engineers presently in the service of the Carrier is of vital interest to the firemen because it not only affects the number of firemen who can work as firemen, but it affects the amount of money the firemen can earn. If the Engineers' Committee had the exclusive right to say when a fireman should be made an engineer, then it is conceivable that no fireman could be promoted to the position of engineer. Such is the contention of the Engineers' Committee but, we think, without merit.

B. Concerning the Decision In Virginian R. Co. v. System Federation No. 40, 300 U. S. 515.

Much has been written and said about a portion of

the opinion in the Virginian case. Maybe we have misconstrued the language used, but we do not think so. The particular part of the opinion over which much argument has arisen reads as follows:

> "It [Railway Labor Act]" imposes the affirmative duty to treat only with the true representative, and hence the negative duty to treat with no other."

We think the language quoted means that the Carrier must treat, as regards the instant case, with the representative of the engineers if a dispute between the engineers, involving a matter of interest to the engineers, arises with the Carrier. Conversely, if a dispute arises between the firemen and the Carrier, involving a matter of interest to the firemen, the Carrier must treat with the true representative of the firemen, and not some party who is not the true representative of the firemen.

In elaborating upon the foregoing language quoted from the opinion in the *Virginian* case, the Court stated:

> "* * * the injunction against petitioner's entering into any contract concerning rules, rates of pay, and working conditions, except with respondent, is designed only to prevent collective bargaining with any one purporting to represent employees, other than respondent, who has been ascertained to be their true representative."

The Firemen's Committee is not purporting to represent the engineers. The Firemen's Committee is representing the firemen in a dispute involving the firemen. The Carrier entered into the Mediation Agreement with the Firemen's Committee concerning a dispute in which the firemen were interested.

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The decision in the *Virginian* case reiterates the rule that this Court is bound by the findings of fact of the lower court as follows:

> "The concurrent findings of fact of the two courts below are not shown to be plainly erroneous or unsupported by evidence. We accordingly accept them as the conclusive basis for decision * * *"

We think the *Virginian* case is authority for the validity of the Mediation Agreement made by the Carrier and the Firemen's Committee. Clearly, the Mediation Agreement is not in conflict with the holding in the *Virginian* case.

C. Other Authorities In Support of Validity of the Mediation Agreement.

In deciding this case, the Circuit Court of Appeals italicized the pertinent provisions of the Railway Labor Act applicable to a proper disposition of this case. It quoted 45 U. S. C. A. 152, Second, supra, and italicized the following words: "INTERESTED IN THE DISPUTE."

As previously stated, the Circuit Court concurred with the trial court to the effect that both the engineers and the firemen were interested in the dispute—that is, a rule for the transfer of men from one to the other. Frankly, we think the Circuit Court went too far in holding the Mediation Agreement incomplete because it did not include the engineers. In all other respects, we submit the decision is sound. We think the trial court's judgment is the correct one, except wherein the trial court ordered the complaint dismissed. It seems to us that the trial court should have ordered that the relief sought by the Engineers' Committee should have been denied.

The Railway Labor Act does not force parties to contract; it simply makes it their duty to confer or negotiate. The Carrier and the Engineers' Committee did confer and tried to negotiate but could not agree. The fact that the Engineers' Committee and the Carrier could not make an agreement to settle a dispute between them is, of course, no reason why the Carrier and the Firemen's Committee cannot make an agreement for the settlement of a dispute involving the Carrier and the firemen.

In *Order of Ry. Conductors of America, et al v. National Mediation Board et al, 113 F. 2d 531,* the Order of Ry. Conductors (ORC) sued to set aside a certificate of the National Mediation Board to the effect that the Brotherhood of R. R. Trainmen (BRT) is entitled to represent yardmen (including yard foremen or yard conductors, yard helpers or yard brakemen, and switchtenders) on that road. It was argued that the Board's findings that yard foremen or yard conductors are part of the craft or class of yardmen was not supported by substantial evidence, or was arbitrary and capricious. The trial court found that there was sufficient evidence to support the Board's finding and dismissed the suit, and the dismissal was affirmed by the U. S. Court of Appeals for the District of Columbia.

In disposing of the *Order of Ry. Conductors* case, the Court of Appeals stated (p. 533):

> "We think the certification is not arbitrary and is supported by abundant evidence. The Railway Labor Act is intended not merely to protect independence and the right to organize, but also to settle disputes and avoid interruptions in operation * * It intends that groups which have chosen to bargain as units may do so."

The Supreme Court of the United States, in *T. & N. O. R. Co. et al v. Brotherhood of Ry. and Steamship Clerks, etc., et al*, 281 U. S. 548, in passing upon the finality of facts found by the lower court, had this to say:

> "On the questions of fact, both courts below decided against the petitioners. Under the well-established rule, this court accepts the findings in which two courts concur, unless clear error is shown."

D. Concerning the Position of the Carrier.

The Carrier knows, through long years of experience and actual practice, that both firemen and engineers are interested in *how, when*, and *under what circumstances* a fireman is made an engineer, and when an engineer is made a fireman. Knowing this, it has been the position of the Carrier, and still is, that, both parties being interested, the two ought to agree on the dispute in question and settle it without the Carrier's being penalized.

Since both are interested in the controversy, the Carrier can—in fact, must—treat with both, and exert every reasonable effort to settle the dispute with both. However, if it is unable to settle the dispute with one, then it should with the other. The fact that it has been unable to settle the dispute with one should not prevent it from settling with the other. Such was the intention of the Congress, and such is the fulfillment of the very words of the Railway Labor Act.

In accordance with the provisions of the Railway Labor Act, the Carrier and the Firemen's Committee settled the dispute in which both were interested. Such agreement was and is complete. The Carrier says it is complete, and so does the Firemen's Committee.

Time and again, the courts have reiterated that the Railway Labor Act is intended to provide for the amicable settlement of disputes between a carrier and its employees. The Act expressly so provides. 45 U. S. C. A. 151 (4, 5), supra. Any holding which would prevent a carrier from conferring with its employees over a dispute in which either is interested will defeat the very purpose of the Act. Such a holding will prevent the very thing it was intended to accomplish. Such a holding would encourage "strikes", and interruption to commerce, the operation of a carrier, discourage prompt and orderly settlement of disputes concerning rates of pay, rules, and working conditions, and disputes growing out of grievances, or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions.

CONCLUSION.

The mediation agreement between the Carrier and the Firemen's Committee is valid and complete; both the Engineers' Committee and the Firemen's Committee have an interest in the subject-matter of dispute and neither one is prohibited by the Railway Labor Act from conferring with the Carrier and, if possible, settling such dispute, and the Engineers' Committee having declined to agree to a settlement with the interested parties to the matter in dispute, the Carrier and the Firemen's Committee were free to agree to a settlement.

WHEREFORE, the Carrier prays the Court to set aside the judgment of the Circuit Court and render judgment sustaining the trial court; in the alternative,

to render judgment sustaining the Circuit Court, together with its costs.

Respectfully submitted,

G. H. PENLAND,
ALLEN WIGHT,
LUCIAN TOUCHSTONE.

A true copy hereof has been delivered to the respective attorneys of record in this case, by depositing true copy thereof in the United States mail, addressed to them at their respective offices, on the day of October, 1943.

APPENDIX A

RAILWAY LABOR ACT, 45 U. S. C. A., SECS. 151-163.

Section 151. Definitions.

When used in this chapter and section 225 of Title 28 and for the purposes of said chapter and section—

First. The term "carrier" includes any express company, sleeping-car company, carrier by railroad, subject to chapter 1 of Title 49, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such "carrier": *Provided, however*, That the term "carrier" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term "carrier" shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to a carrier where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

Second. The term "Adjustment Board" means the National Railroad Adjustment Board created by this chapter.

Third. The term "Mediation Board" means the National Mediation Board created by this chapter.

Fourth. The term "commerce" means commerce among the several States or between any State, Territory, or the District of Columbia and any foreign nation, or between any Territory or the District of Columbia and any State, or between any Territory and any other Territory, or between any Territory and the District of Columbia, or within any Territory or the District of Columbia, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign nation.

Fifth. The term "employee" as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders: *Provided, however*, That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this chapter or by the orders of the Commission. The term "employee"

shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

Sixth. The term "representative" means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

Seventh. The term "district court" includes the district court of the United States for the District of Columbia; and the term "circuit court of appeals" includes the United States Court of Appeals for the District of Columbia.

This chapter may be cited as the "Railway Labor Act."

Section 151a. General purposes.

The purposes of the chapter are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

Section 152. General duties.

First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

Third. Representatives, for the purposes of this Act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this Act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes

of this chapter. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: *Provided*, That nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

Fifth. No carrier, its officers, or agents shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this Act, then such carrier shall notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way.

Sixth. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agree-

ments concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of their party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: *Provided*, (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: *And provided further*, That nothing in this Act shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

Seventh. No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 156 of this title.

Eighth. Every carrier shall notify its employees by printed notices in such form and posted at such times and places as shall be specified by the Mediation Board that all disputes between the carrier and its employees will be handled in accordance with the requirements of this chapter, and in such notices there shall be printed verbatim, in large type, the third, fourth, and fifth paragraphs of this section. The provisions of said paragraphs are hereby made a part of the contract of employment between the carrier and each employee, and shall be held, binding upon the parties, regardless of any other express or implied agreement between them.

Ninth. If any dispute shall arise among a carrier's

employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this chapter. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

Tenth. The willful failure or refusal of any carrier, its officers, or agents to comply with the terms of the third, fourth, fifth, seventh, or eighth paragraph of

this section shall be a misdemeanor, and upon conviction thereof the carrier, officer, or agent offending shall be subject to a fine of not less than $1,000 nor more than $20,000 or imprisonment for not more than six months, or both fine and imprisonment, for each offense, and each day during which such carrier, officer, or agent shall wilfully fail or refuse to comply with the terms of the said paragraphs of this section shall constitute a separate offense. It shall be the duty of any district attorney of the United States to whom any duly designated representative of a carrier's employees may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States, all necessary proceedings for the enforcement of the provisions of this section, and for the punishment of all violations thereof and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States: *Provided*, That nothing in this chapter shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this chapter be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.

Section 153. National Railroad Adjustment Board.

First. There is hereby established a Board to be known as the "National Railroad Adjustment Board", the members of which shall be selected within thirty days after June 21, 1934, and it is hereby provided—

(a) That the said Adjustment Board shall consist of thirty-six members, eighteen of whom shall be selected by the carriers and eighteen by such labor organizations

of the employees, national in scope, as have been or may be organized in accordance with the provisions of section 152 of this title.

(b) The carriers, acting each through its board of directors or its receiver or receivers, trustee or trustees, or through an officer or officers designated for that purpose by said board, trustee or trustees, or receiver or receivers, shall prescribe the rules under which its representatives shall be selected and shall select the representatives of the carriers on the Adjustment Board and designate the division on which each such representative shall serve, but no carrier or system of carriers shall have more than one representative on any division of the Board.

(c) The national labor organizations as defined in paragraph (a) of this section, acting each through the chief executive or other medium designated by the organization or association thereof, shall prescribe the rules under which the labor members of the Adjustment Board shall be selected and shall select such members and designate the division on which each member shall serve; but no labor organization shall have more than one representative on any division of the Board.

(d) In case of a permanent or temporary vacancy on the Adjustment Board, the vacancy shall be filled by selection in the same manner as in the original selection.

(e) If either the carriers or the labor organizations of the employees fail to select and designate representatives to the Adjustment Board, as provided in paragraphs (b) and (c) of this section, respectively, within sixty days after June 31, 1934, in case of any original appointment to office of a member of the Adjustment Board, or in case of a vacancy in any such office, within

thirty days after such vacancy occurs, the Mediation Board shall thereupon directly make the appointment and shall select an individual associated in interest with the carriers or the group of labor organizations of employees, whichever he is to represent.

(f) In the event a dispute arises as to the right of any national labor organization to participate as per paragraph (c) of this section in the selection and designation of the labor members of the Adjustment Board, the Secretary of Labor shall investigate the claim of such labor organization to participate, and if such claim in the judgment of the Secretary of Labor has merit, the Secretary shall notify the Mediation Board accordingly, and within ten days after receipt of such advice the Mediation Board shall request those national labor organizations duly qualified as per paragraph (c) of this section to participate in the selection and designation of the labor members of the Adjustment Board to select a representative. Such representative, together with a representative likewise designated by the claimant, and a third or neutral party disignated by the Mediation Board, constituting a board of three, shall within thirty days after the appointment of the neutral member investigate the claims of the labor organization desiring participation and decide whether or not it was organized in accordance with section 152 of this title and is otherwise properly qualified to participate in the selection of the labor members of the Adjustment Board, and the findings of such boards of three shall be final and binding.

(g) Each member of the Adjustment Board shall be compensated by the party or parties he is to represent. Each third or neutral party selected under the provisions of (f) of this section shall receive from the Mediation

Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while serving as such third or neutral party.

(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

First division: To have jurisdiction over disputes involving train- and yard-service employees of carriers: that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-service employees. This division shall consist of ten members, five of whom shall be selected and designated by the carriers and five of whom shall be selected and designated by the national labor organizations of the employees.

Second division: To have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheet-metal workers, electrical workers, car men, the helpers and apprentices of all the foregoing, coach cleaners, power-house employees, and railroad-shop laborers. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of the employees.

Third division: To have jurisdiction over disputes involving station, tower, and telegraph employees, train dispatchers, maintenance-of-way men, clerical employees, freight handlers, express, station, and store employees, signal men, sleeping-car conductors, sleeping-car porters, and maids and dining-car employees. This division shall consist of ten members, five of whom shall be selected

by the carriers and five by the national labor organizations of employees.

Fourth division: To have jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water, and all other employees of carriers over which jurisdiction is not given to the first, second, and third divisions. This division shall consist of six members, three of whom shall be selected by the carrier and three by the national labor organizations of the employees.

(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on June 21, 1934, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employees and the carrier or carriers involved in any disputes submitted to them.

(k) Any division of the Adjustment Board shall have authority to empower two or more of its members to conduct hearings and make findings upon disputes, when properly submitted, at any place designated by the

division: *Provided, however,* That final awards as to any such dispute must be made by the entire division as hereinafter provided.

(l) Upon failure of any division to agree upon an award because of a deadlock or inability to secure a majority vote of the division members, as provided in paragraph (n) of this section, then such division shall forthwith agree upon and select a neutral person, to be known as "referee", to sit with the division as a member thereof and make an award. Should the division fail to agree upon and select a referee within ten days of the date of the deadlock or inability to secure a majority vote, then the division or any member therof, or the parties or either party to the dispute may certify that fact to the Mediation Board, which Board shall, within ten days from the date of receiving such certificate, select and name the referee to sit with the division as a member thereof and make an award. The Mediation Board shall be bound by the same provisions in the appointment of these neutral referees as are provided elsewhere in this chapter for the appointment of arbitrators and shall fix and pay the compensation of such referees.

(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute, except in so far as they shall contain a money award. In case a dispute arises involving an interpretation of the award the division of the Board upon request of either party shall interpret the award in the light of the dispute.

(n) A majority vote of all members of the division

of the Adjustment Board shall be competent to make an award with respect to any dispute submitted to it.

(o) In case of an award by any division of the Adjustment Board in favor of petitioner, the division of the Board shall make an order, directed to the carrier, to make the award effective and, if the award includes a requirement for the payment of money, to pay the employee the sum to which he is entitled under the award on or before a day named.

(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he the findings and order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division oof the Adjustment Board shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise,

as may be appropriate to enforce or set aside the order of the division of the Adjustment Board.

(q) All actions at law based upon the provisions of this section shall be begun within two years from the time the cause of action accrues under the award of the division of the Adjustment Board, and not after.

(r) The several divisions of the Adjustment Board shall maintain headquarters in Chicago, Illinois, meet regularly, and continue in session so long as there is pending before the division any matter within its jurisdiction which has been submitted for its consideration and which has not been disposed of.

(s) Whenever practicable, the several divisions or subdivisions of the Adjustment Board shall be supplied with suitable quarters in any Federal building located at its place of meeting.

(t) The Adjustment Board may, subject to the approval of the Mediation Board, employ and fix the compensations of such assistants as it deems necessary in carrying on its proceedings. The compensation of such employees shall be paid by the Mediation Board.

(u) The Adjustment Board shall meet within forty days after June 21, 1934 and adopt such rules as it deems necessary to control proceedings before the respective divisions and not in conflict with the provisions of this section. Immediately following the meeting of the entire Board and the adoption of such rules, the respective divisions shall meet and organize by the selection of a chairman, a vice chairman, and a secretary. Thereafter each division shall annually designate one of its members to act as chairman and one of its members to act as vice chairman: *Provided, however,* That the chairman-

ship and vice chairmanship of any division shall alternate as between the groups, so that both the chairmanship and vice chairmanship shall be held alternately by a represenative of the carriers and a representative of the employees. In case of a vacancy, such vacancy shall be filled for the unexpired term by the selection of a successor from the same group.

(v) Each division of the Adjustment Board shall annually prepare and submit a report of its activities to the Mediation Board, and the substance of such report shall be included in the annual report of the Mediation Board to the Congress of the United States. The reports of each division of the Adjustment Board and the annual report of the Mediation Board shall state in detail all cases heard, all actions taken, the names, salaries, and duties of all agencies, employees, and officers receiving compensation from the United States under the authority of this chapter, and an account of all moneys appropriated by Congress pursuant to the authority conferred by this chapter and disbursed by such agencies, employees, and officers.

(w) Any division of the Adjustment Board shall have authority, in its discretion, to establish regional adjustment boards to act in its place and stead for such limited period as such division may determine to be necessary. Carrier members o fsuch regional boards shall be designated in keeping with rules devised for this purpose by the carrier members of the Adjustment Board and the labor members shall be designated in keeping with rules devised for this purpose by the labor members of the Adjustment Board. Any such regional board shall, during the time for which it is appointed, have the same authority to conduct hearings, make findings upon disputes, and adopt the same procedure

as the division of the Adjustment Board appointing it, and its decisions shall be enforceable to the same circumstances and manner as provided in paragraph (1) hereof, with respect to a division of the Adjustment Board.

Second. Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or classes of its or their employees, all acting through their representatives, selected in accordance with the provisions of this chapter, from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board.

Sec. 154. National Mediation Board.

First. The Board of Mediation is abolished, effective thirty days from June 21, 1934 and the members, secretary, officers, assistants, employees, and agents thereof, in office upon June 21, 1934 shall continue to function and receive their salaries for a period of thirty days from such date in the same manner as though this chapter had not been passed. There is established, as an independent agency in the executive branch of the Government, a board to be known as the "National Mediation Board," to be composed of three members appointed by the President, by and with the advice and consent of the Senate, not more than two of whom shall be of the same political party. The terms of office of the members first appointed shall begin as soon as the members shall

qualify, but not before thiry days after June 21, 1934, and expire, as designated by the President at the time of nomination, one on February 1, 1935, one on February 1, 1936, and one on February 1, 1937. The terms of office of all successors shall expire three years after the expiration of the terms for which their predecessors were appointed; but any member appointed to fill a vacancy occuring prior to the expiration of the term of which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor. Vacancies in the Board shall not impair the powers nor affect the duties of the Board nor of the remaining members of the Board. Two of the members in office shall constitute a quorum for the transaction of the business of the Board. Each member of the Board shall receive a salary at the rate of $10,000 per annum, together with necessary traveling and subsistence expenses, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while away from the principal office of the Board on business required by this Act. No person in the employment of or who is pecuniarly or otherwise interested in any organization of employees or any carrier shall enter upon the duties of or continue to be a member of the Board.

All cases referred to the Board of Mediation and unsettled on June 21, 1934 shall be handled to conclusion by the Mediation Board.

A member of the Board may be removed by the President for inefficiency, neglect of duty, malfeasance in office, or ineligibility, but for no other cause.

Second. The Mediation Board shall annually designate a member to act as chairman. The Board shall maintain its principal office in the District of Columbia.

but it may meet at any other place whenever it deems it necessary so to do. The Board may designate one or more of its members to exercise the functions of the Board in mediation proceedings. Each member of the Board shall have power to administer oaths and affirmations. The Board shall have a seal which shall be judicially noticed. The Board shall make an annual report to Congress.

Third. The Mediation Board may (1) appoint such experts and assistants to act in a confidential capacity and, subject to the provisions of the civil-service laws, such other officers and employees as are essential to the effective transaction of the the work of the Board; (2) in accordance with sections 661-674 of Title 5, fix the salaries of such experts, assistants, officers, and employees; and (3) make such expenditures (including expenditures for rent and personal services at the seat of government and elsewhere, for law books, periodicals, and books of reference, and for printing and binding, and including expenditures for salaries and compensation, necessary traveling expenses and expenses actually incurred for subsistence, and other necessary expenses of the Mediation Board, Adjustment Board, Regional Adjustment Boards established under paragraph (w) of section 153 of this title, and boards of arbitration, in accordance with the provisions of this section and sections 153 and 157 of this title, respectively), as may be necessary for the execution of the functions vested in the Board, in the Adjustment Board and in the boards of arbitration, and as may be provided for by Congress from time to time. All expenditures of the Board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

Fourth. The Mediation Board is hereby authorized

by its order to assign, or refer, any portion of its work, business, or functions arising under this chapter or any other Act of Congress, or referred to it by Congress or either branch thereof, to an individual member of the Board or to an employee or employees of the Board to be designated by such order for action thereon, and by its order at any time to amend, modify, supplement, or rescind any such assignment or reference. All such orders shall take effect forthwith and remain in effect until otherwise ordered by the Board. In conformity with and subject to the order or orders of the Mediation Board in the premises, [and] such individual member of the Board or employee designated shall have power and authority to act as to any of said work, business, or functions so assigned or referred to him for action by the Board.

Fifth. All officers and employees of the Board of Mediation (except the members thereof whose offices are hereby abolished) whose services in the judgment of the Mediation Board are necessary to the efficient operation of the Board are hereby transferred to the Board, without change in classification or compensation; except that the Board may provide for the adjustment of such classification or compensation to conform to the duties to which such officers and employees may be assigned.

All unexpended appropriations for the operation of the Board of Mediation that are available at the time of the abolition of the Board of Mediation shall be transferred to the Mediation Board and shall be available for its use for salaries and other authorized expenditures.

Section 155. Functions of Mediation Board.

First. The parties, or either party, to a dispute be-

tween an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in section 160 of the title) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this chapter.

If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under section 160 of this title, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose.

Second. In any case in which a controversy arises over the meaning or the application of any agreement reached through mediation under the provisions of this chapter, either party to the said agreement, or both, may apply to the Mediation Board for an interpretation of the meaning or application of such agreement. The said Board shall upon receipt of such request notify the parties to the controversy, and after a hearing of both sides give its interpretation within thirty days.

Third. The Mediation Board shall have the following duties with respect to the arbitration of disputes under section 157 of this title:

(a) On failure of the arbitrators named by the parties to agree on the remaining arbitrator or arbitrators within the time set by Section 157 of this title, it shall be the duty of the Mediation Board to name such remaining arbitrator or arbitrators. It shall be the duty of the Board in naming such arbitrator or arbitrators to appoint only those whom the Board shall deem wholly disinterested in the controversy to be arbitrated and impartial and without bias as between the parties to such arbitration. Should, however, the Board name an arbitrator or arbitrators not so disinterested and impartial, then, upon proper investigation and presentation of the facts, the Board shall promptly remove such arbitrator.

If an arbitrator named by the Mediation Board, in accordance with the provisions of this chapter, shall be removed by such Board as provided by this chapter, or if such an arbitrator refuses or is unable to serve, it shall be the duty of the Mediation Board, promptly to select another arbitrator in the same manner as provided in this chapter for an original appointment by the Mediation Board.

(b) Any member of the Mediation Board is authorized to take the acknowledgment of an agreement to arbitrate under this chapter. When so acknowledged, or when acknowledged by the parties before a notary public or the clerk of a district court or a circuit court of appeals of the United States, such agreement to arbitrate shall be delivered to a member of said Board or transmitted to said Board, to be filed in its office.

(c) When an agreement to arbitrate has been filed with the Mediation Board, or with one of its members, as provided by this section, and when the said Board has been furnished the names of the arbitrators chosen by the parties to the controversy, it shall be the duty of the Board to cause a notice in writing to be served upon said arbitrators, notifying them of their appointment, requesting them to meet promptly to name the remaining arbitrator or arbitrators necessary to complete the Board of Arbitration, and advising them of the period within which, as provided by the agreement to arbitrate, they are empowered to name such arbitrator or arbitrators.

(d) Either party to an arbitration desiring the reconvening of a board of arbitration to pass upon any controversy arising over the meaning or application of an award may so notify the Mediation Board in writing, stating in such notice the question or questions to be submitted to such reconvened Board. The Mediation Board shall thereupon promptly communicate with the members of the Board of Arbitration, or a subcommittee of such Board appointed for such purpose pursuant to a provision in the agreement to arbitrate, and arrange for the reconvening of said Board of Arbitration or subcommittee, and shall notify the respective parties to the controversy of the time and place at which the Board,

or the subcommittee, will meet for hearings upon the matters in controversy to be submitted to it. No evidence other than that contained in the record filed with the original award shall be received or considered by such reconvened Board or subcommittee, except such evidence as may be necessary to illustrate the interpretations suggested by the parties. If any member of the original Board is unable or unwilling to serve on such reconvened Board or subcommittee thereof, another arbitrator shall be named in the same manner and with the same powers and duties as such original arbitrator.

(e) Within sixty days after June 21, 1934, every carrier shall file with the Mediation Board a copy of each contract with its employees in effect on the 1st day of April 1934, covering rates of pay, rules, and working conditions. If no contract with any craft or class of its employees has been entered into, the carrier shall file with the Mediation Board a statement of that fact including also a statement of the rates of pay, rules and working conditions applicable in dealing with such craft or class. When any new contract is executed or change is made in an existing contract with any class or craft of its employees covering rates of pay, rules, or working conditions, or in those rates of pay, rules, and working conditions of employees not covered by contract, the carrier shall file the same with the Mediation Board within thirty days after such new contract or change in existing contract has been executed or rates of pay, rules, and working conditions have been made effective.

(f) The Mediation Board shall be the custodian of all papers and documents heretofore filed with or transferred to the Board of Mediation bearing upon the settlement, adjustment, or determination of disputes between carriers and their employees or upon mediation or arbi-

tration proceedings held under or pursuant to the provisions of any Act of Congress in respect thereto; and the President is authorized to designate a custodian of the records and property of the Board of Mediation until the transfer and delivery of such records to the Mediation Board and to require the transfer and delivery to the Mediation Board o fany and all such papers and documents filed with it or in its possession.

Section 156. Procedure in changing rates of pay, rules and working conditions.

Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by section 155 of this title, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

Section 157. Arbitration.

First. Whenever a controversy shall arise between a carrier or carriers and its or their employees which is

not settled either in conference between representatives of the parties or by the appropriate adjustment board or through mediation, in the manner provided in the preceding sections, such controversy may, by agreement of the parties to such controversy, be submitted to the arbitration of a board of three (or, if the parties to the controversy so stipulate, of six) persons: *Provided, however*, That the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this chapter or otherwise.

Second. Such board of arbitration shall be chosen in the following manner:

(a) In the case of a board of three, the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name two arbitrators; the four arbitrators thus chosen shall select a third arbitrator. If the arbitrators chosen by the paties shall fail to name the third arbitrator within five days after their first meeting, such third arbitrator shall be named by the Mediation Board.

(b) In the case of a board of six, the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each nam two arbitrators; the four arbitrators thus chosen shall, by a majority vote, select the remaining two arbitrators. If the arbitrators chosen by the parties shall fail to name the two arbitrators within fifteen days after their first meeting, the said two arbitrators, or as many of them as have not been named, shall be named by the Mediation Board.

Third. When the arbitrators selected by the respective parties have agreed upon the remaining arbitrator or

arbitrators, they shall notify the Mediation Board, and, in the event of their failure to agree upon any or upon all of the necessary arbitrators within the period fixed by this chapter, they shall, at the expiration of such period notify the Mediation Board of the arbitrators selected, if any, or of their failure to make or to complete such selection.

(b) The board of arbitration shall organize and select its own chairman and make all necessary rules for conducting its hearings: *Provided, however,* That the board of arbitration shall be bound to give the parties to the controversy a full and fair hearing, which shall include an opportunity to present evidence in support of their claims, and an opportunity to present their case in person, by counsel, or by other representative as they may respectively elect.

(c) Upon notice from the Mediation Board that the parties, or either party, to an arbitration desire the reconvening of the board of arbitration (or a subcommittee of such board of arbitration appointed for such purpose pursuant to the agreement to arbitrate) to pass upon any controversy over the meaning or application of their award, the board, or its subcommittee, shall at once reconvene. No question other than, or in addition to, the questions relating to the meaning or application of the award, submitted by the party or parties in writing, shall be considered by the reconvened board of arbitration or its subcommittee.

Such rulings shall be acknowledged by such board or subcommittee thereof in the same manner, and filed in the same district court clerk's office, as the original award and become a part thereof.

(d) No arbitrator, except those chosen by the Medi-

ation Board, shall be incompetent to act as an arbitrator because of his interest in the controversy to be arbitrated, or because of his connection with or partiality to either of the parties to the arbitration.

(e) Each member of any board of arbitration created under the provisions of this chapter named by either party to the arbitration shall be compensated by the party naming him. Each arbitrator selected by the arbitrators or named by the Mediation Board shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, while serving as an arbitrator.

(f) The board of arbitration shall furnish a certified copy of its award to the respective parties to the controversy, and shall transmit the original, together with the papers and proceedings and a transcript of the evidence taken at the hearings, certified under the hands of at least a majority of the arbitrators, to the clerk of the district court of the United States for the district wherein the controversy arose or the arbitration is entered into, to be filed in said clerk's office as hereinafter provided. The said board shall also furnish a certified copy of its award, and the papers and proceedings, including testimony relating thereto, to the Mediation Board, to be filed in its office; and in addition a certified copy of its award shall be filed in the office of the Interstate Commerce Commission: *Provided, however*, That such award shall not be construed to diminish or extinguish any of the powers or duties of the Interstate Commerce Commission, under chapter 1 of Title 49.

(g) A board of arbitration may, subject to the approval of the Mediation Board, employ and fix the

compensation of such assistants as it deems necessary in carrying on the arbitration proceedings. The compensation of such employees, together with their necessary traveling expenses and expenses actually incurred for subsistence, while so employed, and the necessary expenses of boards of arbitration, shall be paid by the Mediation Board.

Whenever practicable, the board shall be supplied with suitable quarters in any Federal building located at its place of meeting or at any place where the board may conduct its proceedings or deliberations.

(h) All testimony before said board shall be given under oath or affirmation, and any member of the board shall have the power to administer oaths or affirmations. The board of arbitration, or any member thereof, shall have the power to require the attendance of witnesses and the production of such books, papers, contracts, agreements, and documents as may be deemed by the board of arbitration material to a just determination of the matters submitted to its arbitration, and may for that purpose request the clerk of the district court of the United States for the district wherein said arbitration is being conducted to issue the necessary subpoenas, and upon such request the said clerk or his duly authorized deputy shall be, and he hereby is, authorized, and it shall be his duty, to issue such subpoenas. In the event of the failure of any person to comply with any such subpoena, or in the event of the contumacy of any witness appearing before the board of arbitration, the board may invoke the aid of the United States courts to compel witnesses to attend and testify and to produce such books, papers, contracts, agreements, and documents to the same extent and under the same conditions and penalties as provided for in chapter 1 of Title 49.

Any witness appearing before a board of arbitration shall receive the same fees and mileage as witnesses in courts of the United States, to be paid by the party securing the subpoena.

Section 158. Agreement to arbitrate.

The agreement to arbitrate—

(a) Shall be in writing;

(b) Shall stipulate that the arbitration is had under the provisions of this chapter;

(c) Shall state whether the board of arbitration is to consist of three or of six members;

(d) Shall be signed by the duly accredited representatives of the carrier or carriers and the employees, parties respectively to the agreement to arbitrate, and shall be acknowledged by said parties before a notary public, the clerk of a district court or circuit court of appeals of the United States, or before a member of the Mediation Board, and, when so acknowledged, shall be filed in the office of the Mediation Board;

(e) Shall state specifically the questions to be submitted to the said board for decision; and that, in its award or awards, the said board shall confine itself strictly to decisions as to the questions so specifically submitted to it;

(f) Shall provide that the questions, or any one or more of them, submitted by the parties to the board of arbitration may be withdrawn from arbitration on notice to that effect signed by the duly accredited representatives of all the parties and served on the board of arbitration;

(g) Shall stipulate that the signatures of a majority of said board of arbitration affixed to their award shall be competent to constitute a valid and binding award;

(h) Shall fix a period from the date of the appointment of the arbitrator or arbitrators necessary to complete the board (as provided for in the agreement) within which the said board shall commence its hearings;

(i) Shall fix a period from the beginning of the hearings within which the said board shall make and file its award: *Provided*, That the parties may agree at any time upon an extension of this period;

(j) Shall provide for the date from which the award shall become effective and shall fix the period during which the award shall continue in force;

(k) Shall provide that the award of the board of arbitration and the evidence of the proceedings before the board relating thereto, when certified under the hands of at least a majority of the arbitrators, shall be filed in the clerk's office of the district court of the United States for the district wherein the controversy arose or the arbitration was entered into, which district shall be designated in the agreement; and, when so filed, such award and proceedings shall constitute the full and complete record of the arbitration;

(l) Shall provide that the award, when so filed, shall be final and conclusive upon the parties as to the facts determined by said award and as to the merits of the controversy decided;

(m) Shall provide that any difference arising as to the meaning, or the application of the provisions, of an award made by a board of arbitration shall be referred back for a ruling to the same board, or, by agree-

ment, to a subcommittee of such board; and that such ruling, when acknowledged in the same manner, and filed in the same district court clerk's office, as the original award, shall be a part of and shall have the same force and effect as such original award; and

(n) Shall provide that the respective parties to the award will each faithfully execute the same.

The said agreement to arbitrate, when properly signed and acknowledged as herein provided, shall not be revoked by a party to such agreement: *Provided, however*, That such agreement to arbitrate may at any time be revoked and canceled by the written agreement of both parties, signed by their duly accredited representatives, and (if no board of arbitration has yet been constituted under the agreement) delivered to the Mediation Board or any member thereof; or, if the board of arbitration has been constituted as provided by this chapter, delivered to such board of arbitration.

Section 159. Award and judgment thereon.

First. The award of a board of arbitration, having been acknowledged as herein provided, shall be filed in the clerk's office of the district court designated in the agreement to arbitrate.

Second. An award acknowledged and filed as herein provided shall be conclusive on the parties as to the merits and facts of the controversy submitted to arbitration, and unless, within ten days after the filing of the award, a petition to impeach the award, on the grounds hereafter set forth, shall be filed in the clerk's office of the court in which the award has been filed, the court shall enter judgment on the award, which judgment shall be final and conclusive on the parties.

Third. Such petition for the impeachment or contesting of any award so filed shall be entertained by the court only on one or more of the following grounds:

(a) That the award plainly does not conform to the substantive requirements laid down by this chapter for such awards, or that the proceedings were not substantially in conformity with this chapter;

(b) That the award does not conform, nor confine itself, to the stipulations of the agrement to arbitrate; or

(c) That a member of the board of arbitration rendering the award was guilty of fraud or corruption; or that a party to the arbitration practiced fraud or corruption which fraud or corruption affected the result of the abitration: *Provided, however*, That no court shall entertain any such petition on the ground that an award is invalid for uncertainty; in such case the proper remedy shall be a submission of such award to a reconvened board, or subcommittee thereof, for interpretation, as provided by this Act: *Provided further*, That an award contested as herein provided shall be construed liberally by the court, with a view to favoring its validity, and that no award shall be set aside for trivial irregularity or clerical error, going only to form and not to substance.

Fourth. If the court shall determine that a part of the award is invalid on some ground or grounds designated in this section as a ground of invalidity, but shall determine that a part of the award is valid, the court shall set aside the entire award: *Provided, however*, That, if the parties shall agree thereto, and if such valid and invalid parts are separable, the court shall set aside the invalid part, and order judgment to stand as to the valid part.

Fifth. At the expiration of ten days from the decision of the district court upon the petition filed as aforesaid, final judgment shall be entered in accordance with said decision, unless during said ten days either party shall appeal therefrom to the circuit court of appeals. In such case only such portion of the record shall be transmitted to the appellate court as is necessary to the proper understanding and consideration of the questions of law presented by said petition and to be decided.

Sixth. The determination of said circuit court of appeals upon said questions shall be final, and, being certified by the clerk thereof to said district court, judgment pursuant thereto shall thereupon be entered by said district court.

Seventh. If the petitioner's contentions are finally sustained, judgment shall be entered setting aside the award in whole or, if the parties so agree, in part; but in such case the parties may agree upon a judgment to be entered disposing of the subject matter of the controversy, which judgment when entered shall have the same force and effect as judgment entered upon an award.

Eighth. Nothing in this chapter shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this chapter be construed to make the quitting of his labor or service by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.

Section 160. Emergency Board.

If a dispute between a carrier and its employees be

not adjusted under the foregoing provisions of this chapter and should, in the judgment of the Mediation Board, threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation Board shall notify the President, who may thereupon, in his discretion, create a board to investigate and report respecting such dispute. Such board shall be composed of such number of persons as to the President may seem desirable: *Provided, however,* That no member appointed shall be pecuniarily or otherwise interested in any organization of employees or any carrier. The compensation of the members of any such board shall be fixed by the President. Such board shall be created separately in each instance and it shall investigate promptly the facts as to the dispute and make a report thereon to the President within thirty days from the date of its creation.

There is hereby auhorized to be appropriated such sums as may be necessary for the expenses of such board, including the compensation and the necessary traveling expenses and expenses actually incurred for subsistence, of the members of the board. All expenditures of the board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

After the creation of such board and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose.

Section 161. Effect of partial invalidity of chapter.

If any section, subsection, sentence, clause, or phrase of this chapter is for any reason held to be unconstitu-

tional, such decision shall not affect the validity of the remaining portions of this chapter. All Acts or parts of Acts inconsistent with the provisions of this chapter are repealed.

Section 162. Appropriation.

There is hereby authorized to be appropriated such sums as may be necessary for expenditure by the Mediation Board in carrying out the provisions of this chapter.

Section 163. Repeal of prior legislation; exception.

Chapters 6 and 7 of this title; providing for mediation, conciliation, and arbitration, and all acts and parts of Acts in conflict with the provisions of this Act are hereby repealed, except that the members, secretary, officers, employees, and agents of the Railroad Labor Board, in office upon the date of the passage of this Act, shall receive their salaries for a period of 30 days from such date, in the same manner as though this Act had not been passed.

APPENDIX B.

THE DECLARATORY JUDGMENTS ACT. 28 U. S. C. A., SEC. 400.

(1) In cases of actual controversy (except with respect to Federal taxes) the courts of the United States shall have power upon petition, declaration, complaint, or other appropriate pleadings to declare rights and other legal relations of any interested party petitioning for such declaration, whether or not further relief is or could be prayed, and such declaration shall have the force and effect of a final judgment or decree an dbe reviewable as such.

(2) Further relief based on a declaratory judgment

or decree may be granted whenever necessary or proper. The application shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party, whose rights have been adjudicated by the declaration, to show cause why further relief should not be granted forthwith.

(3) When a declaration of right or the granting of further relief based thereon shall involve the determination of issues of fact triable by a jury, such issues may be sumitted to a jury in the form of interrogatories, with proper instructions by the court, whether a general verdict be required or not.

APPENDIX C

THE NORRIS-LaGUARDIA ACT. 29 U. S. C. A., SECS. 101-115.

Sec. 101. No court of the United States, as defined in sections 101-115 of this title shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of such sections; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in such sections.

Sec. 102. In the interpretation of sections 101-115 of this title and in determining the jurisdiction and authority of the courts of the United States, as such jurisdicion and authority are defined and limited in such sections, the public policy of the United States is hereby declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for own-

ers of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted.

Sec. 103. Any undertaking or promise, such as is described in this section, or any other undertaking or promise in conflict with the public policy declared in section 102 of this title, i shereby declared to be contrary to the public policy of the United States, shall not be enforceable in any court of the United States and shall not afford any basis for the granting of legal or equitable relief by any such court, including specifically the following:

Every undertaking or promise hereafter made, whether written or oral, express or implied, constituting or contained in any contract or agreement of hiring or employment between any individual, firm, company, association, or corporation, and any employee or prospective employee of the same, whereby

(a) Either party to such contract or agreement undertakes or promises not to join, become, or remain a member of any labor organization or of any employer organization; or

(b) Either party to such contract or agreement undertakes or promises that he will withdraw from an employment relation in the event that he joins, becomes, or remains a member of any labor organization or of any employer organization.

Sec. 104. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceaasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participatin gor interested in any labor dispute who is being proceeded against in, or is prosectuing, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising,

speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title.

Sec. 105. No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in section 104 of this title.

Sec. 106. No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

Sec. 107. No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as defined in sections 101-115 of this title, except after

hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complainant's prpoerty will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: *Provided*,

however, That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking mentioned in this section shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing in this section contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

Sec. 108. No restraining order or injunctive relief

shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

Sec. 109. No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case invloving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided in sections 101-115 of this title.

Sec. 110. Whenever any court of the United States shall issue or deny any temporary injunction in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings and on his filing the usual bond for costs, forthwith certify as in ordinary cases the record of the case to the circuit court of appeals for its review. Upon the filing

of such record in the circuit court of appeals, the appeal shall be heard and the temporary injunctive order affirmed, modified, or set aside with the greatest possible expedition, giving the proceedings precedence over all other matters except older matters of the same character.

Sec. 111. In all cases arising under sections 101-115 of this title in which a person shall be charged with contempt in a court of the United States (as herein defined), the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed: *Provided*, That this right shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly wit hthe administration of justice or to apply to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders, or process of the court.

Sec. 112. The defendant in any proceeding for contempt of court may file with the court a demand for the retirement of the judge sitting in the proceeding, if the contempt arises from an attack upon the character or conduct of such judge and if the attack occurred elsewhere than in the presence of the court or so near thereto as to interfere directly with the administration of justice. Upon the filing of any such demand the judge shall thereupon proceed no further, but another judge shall be designated in the same manner as is provided by law. The demand shall be filed prior to the hearing in the contempt proceeding.

Sec. 113. When used in sections 101-115 of this title, and for the purposes of such sections—

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are

engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as defined in this section) of "persons participating or interested" therein (as defined in this section).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(d) The term "court of the United States" means any court of the United States whose jurisdiction has

been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia.

Sec. 114. If any provision of sections 101-115 of this title thereof to any person or circumstance is held unconstitutional or otherwise invalid, the remaining provisions of such sections and the application of such provisions to other persons or circumstances shall not be affected thereby.

Sec. 115. All acts and parts of acts in conflict with the provisions of sections 101-115 of this title are hereby repealed.

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OCT 6

In the Supreme Court of the United States

OCTOBER TERM, 1943.

No. 23.

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE MISSOURI-KANSAS-TEXAS RAILROAD, AN UNINCORPORATED ASSOCIATION,

Petitioner,

vs.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO
THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

BRIEF FOR RESPONDENT, GENERAL GRIEVANCE COMMITTEE OF THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN.

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In the Supreme Court of the United States

OCTOBER TERM, 1943.

No. 23.

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE MISSOURI-KANSAS-TEXAS RAILROAD, AN UNINCORPORATED ASSOCIATION,

Petitioner,

vs.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO
THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

BRIEF FOR RESPONDENT, GENERAL GRIEVANCE COMMITTEE OF THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN.

JURISDICTION.

The petitioner, which will sometimes be referred to as the "Engineers' Brotherhood," or as the "Engineers," asserts that "this action arises under a law regulating commerce * * *, to-wit, the Railway Labor Act * * *." (First Amended Complaint, para. 1; R. 21) This is denied by the third party defendant, which will be hereinafter referred to as "this respondent," or as the "Firemen's Brotherhood" (Answer of third party defendant, para. 1; R. 37).

This case involves a conflict over the jurisdiction or bargaining authority of two labor unions, namely, the Brotherhood of Locomotive Engineers and the Brotherhood

of Locomotive Firemen and Enginemen. The petitioner is a subsidiary organization of the former; this respondent is a subsidiary organization of the latter. It is common knowledge that these two Brotherhoods have represented the engineers' craft and the firemen's craft, respectively, in collective bargaining with most of the railroads in the United States and Canada over a long period of time.

The petitioner contends that with the enactment of the Railway Labor Act, the jurisdiction or bargaining authority of railway labor unions, as between each other, became defined. Certain items of joint interest to both the engineers' and firemen's crafts have been the subject of collective bargaining by both Brotherhoods with the railroads, and with each other, virtually since their inception. But these items were, the petitioner asserts, removed by the Railway Labor Act from the accustomed jurisdiction of the Firemen's Brotherhood, and placed within the exclusive bargaining authority of the Engineers' Brotherhood.

It is the position of the Firemen's Brotherhood that the Railway Labor Act contains no provision purporting to define the respective bargaining authority or jurisdiction of railway labor unions, that such a result is foreign to the purposes and objectives of the Act, and that, in consequence, the right which the Engineers' Brotherhood here attempts to assert under the Act is so plainly nonexistent that the federal question involved is unsubstantial and inadequate as a basis of federal jurisdiction.

STATEMENT OF THE CASE.

The immediate object of this action is to have an agreement, generally known as the Mediation Agreement of December 12, 1940 (hereinafter referred to as "the Mediation Agreement"), in effect between the respondents, the Missouri-Kansas-Texas Railroad Company and the Missouri-Kansas-Texas Railroad Company of Texas (hereinafter

referred to as the M-K-T Railroad) and the Firemen's Brotherhood declared invalid on the grounds that the subject matter of the agreement has been placed by the Railway Labor Act beyond the bargaining authority of the Firemen's Brotherhood, and within the exclusive jurisdiction of the Engineers' Brotherhood. This attack upon the jurisdiction of the Firemen's Brotherhood is premised upon the hypothesis that the Railway Labor Act has divided the whole field of collective bargaining between a carrier and its numerous crafts or classes of employees into separate and exclusive areas or compartments. Each of these areas or compartments represents the sum total of items or interests that may be the subject of collective bargaining between the representative of a particular craft or class of employees and the carrier. The items covered by the Mediation Agreement are said by the petitioner to have been placed by the Act in the area or compartment of subjects allotted to the engineers' craft. Hence, the M-K-T Railroad and the Firemen's Brotherhood were bargaining in forbidden territory when, acting under the sponsorship of the National Mediation Board, they entered into the agreement of December 12, 1940.

If the hypothesis relied upon by the plaintiff is sound, then the problem faced by this Court in resolving this case requires merely an understanding of the items or subjects covered by the Mediation Agreement and a decision on the question whether these items or subjects belong in the category of subjects allotted by the Railway Labor Act to the firemen's representative, or to the engineers' representative.

This approach to the case has been adopted, also, by the Solicitor General (Brief for the United States, pp. 34-45). He began by embracing the hypothesis in its entirety: "Although the principle seems clear enough, its application where the work of the two crafts is so interrelated as here is quite difficult" (Brief, p. 35). And his resolution of the

one question thus presented for decision is typified by his treatment of the first paragraph of the 1940 Agreement in the following manner:

> "This paragraph of the 1940 Agreement regulates the order in which men are called to service as engineers. It does not merely determine the order in which they shall stop working as firemen. * * * This is a subject clearly within the exclusive jurisdiction of the representative of the Engineers." (Brief, p. 43.)

If this approach to the case is the proper one, then the statement of the case as made by the petitioner in its brief is a substantially complete and adequate presentation of such facts as need to be taken note of by this Court.

It is the position of the Firemen's Brotherhood, however, that this treatment of the case is superficial and tends to beg the major question involved, to-wit, whether the Railway Labor Act assumes to outline or define the bargaining jurisdiction of a craft's representative. The respondents are not aware that the Railway Labor Act assumes to enter the field of jurisdictional disputes between labor organizations or the crafts they represent. The Firemen's Brotherhood contends, to the contrary, that the Railway Labor Act contains no language or provision manifesting an obvious intention by Congress to enter this field; that the Congress has in fact disclaimed any such purpose. And the Brotherhood further contends that if any doubt on this subject is gleaned from a reading of the Act itself, such doubt cannot be entertained by an impartial mind once a comprehensive understanding is acquired of the manner in which railroad employees are more or less constantly shifted from one craft to another because of the interrelated nature of the work performed by the two crafts, and the manner in which the processes of collective bargaining became adapted to this situation long prior to the enactment of the Railway Labor Act. To acquire this understanding, it is necessary to have a more comprehensive picture of this practice and of the established bar-

gaining procedure in the railroad industry than is provided by the petitioner's statement of the case.

The operation of railway locomotives requires, as everyone knows, the services of two crafts or classes of employees, to-wit, engineers and firemen. The training necessary for a man to serve efficiently as an engineer is customarily acquired by serving as a fireman. Hence, railroads usually acquire all, or a substantial majority, of their engineers from among their own craft of firemen. This is advantageous to the railroad and it is a plan favored by the employees, because it provides the firemen with an incentive for consistent and loyal service and they are, in turn, rewarded by the higher paid and choicer work available to them as engineers. Prior to the time that the Firemen's Brotherhood began acting as the representative of the firemen's craft, railroad management often selected firemen of their choice for promotion to engineers, without particular regard for qualifications. This practice has been eliminated through the efforts of the Firemen's Brotherhood by the adoption of agreements with all railroads generally throughout the country establishing a system of rules governing the terms and conditions under which men will be promoted from the firemen's craft into the engineers' craft in the order of their seniority as firemen (R. 282).

A railroad's need for engineers varies with fluctuations in traffic. As traffic increases, additional engineers are required, and as traffic decreases a surplus of engineers develops and something must be done with them. A man once employed as an engineer has no right, in the absence of contract, to return to work as a fireman in the event his services are no longer needed as an engineer. It is obviously undesirable for the railroad to lose the services of demoted engineers in their capacity as firemen. This problem was eliminated from virtually all railroads (it was eliminated from the M-K-T Railroad some forty-five years

ago) through agreements by the Firemen's and Engineers' Brotherhoods with the carriers establishing the terms and conditions under which furloughed engineers may return to work as firemen (R. 231). Furloughed engineers occupy, of course, a high position on the firemen's roster. They are, therefore, able to command the best of the firing jobs (R. 285).

The evil to the firemen's craft of this arrangement arises from the fact that at least *two* firemen are displaced by the reinstatement to firing of *one* furloughed engineer,—one of these being the fireman who is "bumped" to a lower position because his job was taken from him by the furloughed engineer, and the other being the fireman at the bottom of the firemen's working list who is forced out of a job as the "bumped" fireman exercises in turn his right to demand the job of some other fireman occupying a lower position than his own on the firemen's roster. This process may result in the displacement downward of many firemen. The transfer of a fireman to a job as engineer has a reverse effect on the firemen's craft. One fireman moves up to take the place of the man advanced to engineer, and this move permits other firemen of lesser seniority to advance in turn, with the end result that a furloughed fireman at the bottom of the list is recalled to work.

The extent of this shifting of men from the firemen's craft into the engineers' craft and their return to the firemen's craft is substantial. Evidence introduced by the Firemen's Brotherhood discloses that, as of January 15, 1941, a total of 321 men were working as engineers on the M-K-T Railroad, and 338 men were working as firemen and helpers. Of the latter group, 169 men, or *50%*, were *demoted engineers*. There were also 39 demoted engineers who were not firing because they had no seniority rights as firemen on the M-K-T Railroad, and *there were 99 firemen who were furloughed and out of work* (R. 227, 228-229). *Thus, one-half of all the employees working as fire-*

men were in the group that moved from one craft to the other.

There is no information of record as to what proportion of these 169 men were moving more or less frequently between the two crafts. But the fact that one-half of all the firemen employed on the M-K-T Railroad were demoted engineers, and that the qualified firemen on the seniority list who were furloughed and out of a job equalled approximately 30% of the total number of employed firemen, this at a time when the railroads of the country were enjoying an uncommon amount of traffic (1941), points up the relative magnitude of the problem created by this shift of employees from one craft to the other, and the demoralizing consequences it perforce has on the firemen at the lower end of the seniority roster. The seriousness of this situation to the firemen is further emphasized by the fact that this shifting from craft to craft continues for a long period of time, often from 25 to 30 years, before a promoted fireman is able to hold a steady job as engineer (R. 231).

The petitioner introduced testimony as to the employment situation on the M-K-T Railroad as of June 1, 1941. This information is to the effect that there was a total of 438 engineers on the engineers' roster, of which 348 were employed as engineers and 90 were demoted, the latter group presumably working as firemen. There may be a discrepancy between this and the firemen's data, but if we accept the petitioner's figures, even they reveal that in excess of 20% of the engineers are within the group that move from one craft to the other (R. 167-168).

One other significant fact is brought out by the firemen's data. This is that *84.6% of the 169 demoted engineers are members of the Firemen's Brotherhood.* There is, we suggest, more than a casual connection between this fact and this attempt of the Engineers' Brotherhood to gain control over the terms and conditions governing the transfer of these employees between the two crafts.

This interdependence of the two crafts has thus far generally been regulated in a manner designed to promote the welfare of both crafts and the carrier. It has been regulated by a set of rules and conditions that cover, in the main, three subjects. These subjects are, (1) the promotion of firemen to engineers, (2) the return of demoted engineers to work as firemen, and (3) the transfer of qualified engineers from work as firemen to work as engineers. By qualified firemen is meant either demoted engineers or newly promoted engineers.

A move to harmonize the rules and conditions governing these subjects on the railroads throughout the country began in 1913 when the Engineers' and Firemen's Brotherhoods acknowledged to each other their mutual concern with these subjects and reconciled their views by incorporating them into an agreement that has since been known as the Chicago Joint Agreement, made effective May 17, 1913 (R. 232, 233-237, 292). This agreement established, in addition to the rules and regulations on these subjects, a procedure for the submission by the general chairmen of the two organizations on the various railroads, of questions and disputes concerning the proper interpretation and application of the Agreement to the chief executives of the two Brotherhoods for their joint decision. More than a thousand of these decisions were rendered during the lifetime of the agreement. Among them are at least six decisions involving disputes that are precisely like two of the three disputes between the M-K-T Railroad and the Firemen's Brotherhood which were settled by the Mediation Agreement. The terms of the Mediation Agreement are consistent with these decisions rendered by the chief executives (R. 259-277, 292).

The efforts of the two Brotherhoods to promote uniform rules on these three subjects of joint concern to the two crafts were culminated by the incorporation of these rules from 1918 to 1920 into the engineers' and firemen's

schedules in effect on most of the railroads. They were incorporated in the engineers' and firemen's schedules on the defendant railroad as of October 1, 1918 (R. 278).

Article X of the Chicago Joint Agreement, as revised May 4, 1918, contains the rules governing the promotion of firemen (R. 238-243). These appear verbatim in Article 58 of the firemen's schedule (R. 220-224), and they appear in Article 43 of the engineers' schedule (R. 99-102). Article XI of the Chicago Joint Agreement contains the terms and conditions upon which demoted engineers may return to firing service, and must subsequently be removed from this service to work as engineers (R. 242-243). These appear verbatim in the firemen's schedule as Article 49 (R. 218-219), and in the engineers' schedule as Article 44 (R. 102-103).

The Chicago Joint Agreement remained in effect until cancelled at the instance of the Engineers' Brotherhood on October 1, 1927 (R. 255). Efforts were thereafter made by the Firemen's Brotherhood to reestablish the agreement, but without success (R. 278, 279). The provisions of the Chicago Joint Agreement incorporated in the engineers' and firemen's schedules on the M-K-T Railroad remain in both schedules to the present date (R. 278).

The Mediation Agreement of December 12, 1940.

Only brief comment is required in addition to the petitioner's statements on this subject.

Items 1 and 3 of the Mediation Agreement are concerned with the use of "emergency engineers." An emergency engineer is usually a demoted engineer, although he may in a rare instance be a newly promoted fireman. In either event, the man about whom this problem revolves is holding a regular assignment as a *fireman* at the time need arises for his services as an *emergency engineer* (R. 153). He returns to his regular firing assignment immediately after his run or job as an emergency engineer is

completed. His name is not added to the engineers' working lists.

As explained by the petitioner, the practice in effect at the time the Mediation Agreement was entered into, when need for an emergency engineer arose, was to call the senior demoted engineer then working as a fireman "whose home terminal was at the place where such service was required or required to begin," assuming that a demoted engineer was available at this place, and also assuming that another exception explained by the petitioner did not exist (Petitioner's brief, p. 6). The purpose of Item 1 of the Mediation Agreement was to reestablish on the M-K-T Railroad observance of the simple principle of seniority required by the rules found in Article 58 of the firemen's schedule and Article 43 of the engineers' schedule, derived, as previously explained, from the Chicago Joint Agreement, which entitles the oldest available demoted engineer within the seniority district to have the first opportunity available of returning to engineer service, whether that service be emergency or permanent (R. 280-282). The Engineers had departed some time previously from this principle and had succeeded in securing an agreement from the management of the M-K-T Railroad condoning this departure. *At bottom, the issue involved here was which of two men, both working as firemen, would be called to fill an emergency need for an engineer.*

Item 2 of the Mediation Agreement is, in reality, a rule of procedure. Back in 1923, four operating Brotherhoods, to-wit, the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors and Brotherhood of Railroad Trainmen, had agreed that the working lists would be regulated by the M-K-T Railroad "in accordance with existing rules and agreements and rulings made by the general committees." (R. 30-31). These "existing rules and agreements," in so far as the engineers and firemen were concerned, were

the Chicago Joint Agreement and the joint decisions of the Brotherhoods' chief executives thereunder. Adjusting the working lists consists, so far as need be understood for the purpose of this case, of the process of moving firemen into the engineers' craft by placing them on the engineers' working lists, and of demoting engineers by removing them from the engineers' working lists and returning them to work as firemen. These changes are made for the purpose of keeping the mileage run by the engineers within the maximum and minimum limits prescribed by Article 44 of the engineers' schedule (R. 102-103), and Article 49 of the firemen's schedule (R. 218-219), both of which were, as we have already seen, derived from the Chicago Joint Agreement (R. 242-243). The M-K-T Railroad continued to handle the lists for some twelve or fourteen years after the agreement of March 28, 1923, but the Engineers' general chairman finally "drifted" into the habit of regulating the list alone (R. 286, 287). The Engineers do not challenge in this action the validity of the maximum-minimum limitations applicable to engineers. They are challenging the right of the M-K-T Railroad and the Firemen's Brotherhood to revitalize the agreement of March 28, 1923 (to which the Engineers' Brotherhood was a party), under which the task of adjusting the working lists was assumed by the carrier, subject to consultation with the interested general chairmen.

Item 3 of the Mediation Agreement was intended to correct a practice at Smithville, Texas, which, like the practice under Item 1, violated the fundamental requirements of the principle of seniority. An agreement had been made in 1929 by the petitioner with the M-K-T Railroad which permitted an engineer in a pool, when the turn of the man ahead on the pool list came up and he was unable or declined to take the run and there was no engineer available on the extra list, to move up and fill the vacancy. In this manner the engineers were able to make

extra miles and thus extra money. Prior to 1929, the need for an emergency engineer under these circumstances was met in the manner required by the principle of seniority, which was by calling the oldest available demoted engineer from firing service. Item 3 of the Mediation Agreement reestablished the practice that obtained prior to 1929.

The explanation advanced by the Engineers in justification of the unique practice at Smithville is as follows:

> "There was a special reason for having this exception to the general rule in effect at this point, as explained by the General Chairman, which was that there were so many regular engineers laying off at times when extra engineers were not available, resulting in the calling of emergency engineers, the regularly assigned engineers on the pool board were not making even the minimum mileage permitted by the schedule agreement; and it was found that, if all permissible mileage was worked by the assigned engineers, the working list could be maintained, or, in some instances, if the maximum mileage should be exceeded thereby, the list could be increased by the addition of another man. * * *" (Petitioner's brief, p. 54.)

It is true, of course, that the individual engineers in the pool who frequently laid off would thereby fail to run the maximum mileage allowed them by the rules. But the fact of the matter is that individual engineers who did not lay off made their maximum allowable mileage, and, when allowed to fill the vacancies created by the lay-offs, their normal good earnings were greatly swelled. The rule insisted on by the firemen merely required that vacancies be filled by the senior available demoted engineer, instead of their being filled by engineers already making their maximum allowable mileage under the rules. Under the firemen's rule the total mileage allotted to the pool remained unchanged; the only engineers in the pool who failed to make their normal mileage were those who elected to lay off, and to the extent that these lay-offs did occur the senior

available demoted engineer was accorded the opportunity due him under the principle of seniority as established by the schedules applicable to both crafts.

The fact should be borne in mind that none of the three rules comprising the Mediation Agreement regulates in the slightest degree the wages or working conditions applicable to engineers. *Items 1 and 3 have to do only with the selection of a man to perform emergency service as an engineer, and Item 2 is only a rule of procedure.* Each of these items constitutes, beyond the possibility of dispute, an integral part of the field or area of joint concern to both crafts which was covered by two of the three subjects comprising the Chicago Joint Agreement. A decision by the Court sustaining the validity of the Mediation Agreement would affirm the right of the Firemen's Brotherhood to bargain with the carrier on the subjects covered by the Chicago Joint Agreement. And a decision sustaining the right of the Firemen's Brotherhood in the latter respect must of necessity be equivalent to affirming the validity of the Mediation Agreement.

SUMMARY OF THE ARGUMENT.

The petitioner seeks by this action to have an agreement between the M-K-T Railroad and the Firemen's Brotherhood covering three items or subjects declared null and void. The action is predicated upon the ground that, by entering into this agreement, the respondents violated the rights bestowed by the Railway Labor Act upon the petitioner in its capacity as the exclusive representative of the engineers' craft.

This respondent contends, to the contrary, that it was acting, when it entered into the agreement with the M-K-T Railroad, as the representative of the firemen's craft, and was representing and protecting the interests of the firemen in matters that vitally affected the welfare of the firemen's craft, though such matters also concerned the

engineers' craft. These matters, generally speaking, are the terms and conditions governing the transfer of men between the two crafts, this transfer being essential and more or less continuous because of the fact that service as a fireman constitutes an apprenticeship in preparation for work as an engineer, and the further fact that furloughed engineers must, as a matter of good operating practice, be permitted to return to work as firemen when their services are not needed as engineers, owing to fluctuations in traffic. More specifically, two of the items in the agreement establish the conditions under which demoted engineers will be called from service as firemen to fulfill the carrier's need for emergency engineers. The other item in the agreement sets up a rule of procedure to be followed in the process of demoting engineers and returning them to work as firemen, and in recalling demoted engineers from service as firemen and putting them to work as engineers.

This respondent contends that the Railway Labor Act contains no provisions that were patently intended to establish exclusive bargaining jurisdictions, in addition to its obvious purpose of assuring that there shall be exclusive representation of crafts or classes of employees.

The items covered by the agreement between the two respondents have been the subject of negotiations and agreements between these parties since collective bargaining became an established procedure on the M-K-T Railroad more than forty years ago. The rules and conditions governing these subjects directly and vitally affect the earnings and the welfare of the firemen as a craft, and it is this respondent's view that only the most positive mandate from Congress should suffice as authority for this Court to deprive the firemen's craft of the right to have its interests represented and protected in negotiations with the M-K-T Railroad in matters such as are covered by the agreement between these parties.

The agreement between these parties was fostered and promoted by the National Mediation Board, and was subscribed to by two of the members of the Board. In performing this mediatory service, the Board was functioning as the administrator of the "bargaining provisions" of the Railway Labor Act, and the resulting Mediation Agreement is entitled to a strong presumption of validity.

ARGUMENT.

Questions Propounded by This Court.

Counsel in this and other related cases have been requested by the Court to discuss certain questions "so far as applicable in each case." Only the first two questions appear applicable to the instant case.

1. The appropriateness of declaratory judgment procedure in this case. Subject to the views hereinafter expressed concerning federal jurisdiction of this action, this respondent finds no reason to qualify or dissent from the petitioner's conclusion relative to the question whether resort to declaratory judgment procedure is appropriate in this case.

2. Are questions as to the construction of the contract involved in this action governed by state or federal law? In considering this question, we begin by saying that there is no dispute between the parties as to the proper construction or application of the Mediation Agreement. Its meaning and intended application are understood alike by all parties.

The question propounded by the Court is so phrased as to suggest that the Court desires to know whether the issue concerning the validity of the Mediation Agreement really and substantially involves a federal question. On this point, this respondent takes the position that the petitioner's amended complaint does *not* present a substantial

federal question upon which may be founded federal jurisdiction of this action.

This Court has repeatedly affirmed the following statement of the law on this question:

> "Jurisdiction is the power to decide a justiciable controversy, and includes questions of law as well as of fact. A complaint setting forth a substantial claim under a federal statute presents a case within the jurisdiction of the court as a federal court; and this jurisdiction cannot be made to stand or fall upon the way the court may chance to decide an issue as to the legal sufficiency of the facts alleged any more than upon the way it may decide as to the legal sufficiency of the facts proven. Its decision either way upon either question is predicated upon the existence of jurisdiction, not upon the absence of it. Jurisdiction, as distinguished from merits, is wanting only where the claim set forth in the complaint is so unsubstantial as to be frivolous or, in other words, is plainly without color of merit." (*Binderup v. Pathe Exchange*, 263 U. S. 291, 305 (1923). See also, *Levering & Garrigues Co. v. Morrin*, 289 U. S. 103 (1933); *The Fair v. Kohler Die and Specialty Co.*, 228 U. S. 22 (1913).)

A plaintiff, in undertaking to state a cause of action, may point to a federal statute as the source of the right which he seeks to enforce. If the statute purports to confer the right asserted, but the right is qualified or its exercise conditioned so as to place in doubt the propriety of the plaintiff's action, the action may, according to our understanding of this rule, fail on the merits, but the complaint will in all events present a substantial federal question. On the other hand, if an examination of the statute discloses no legislative treatment of the right asserted, or if the statute clearly negatives the existence of the right, the plaintiff's claim is said to be "plainly without color of merit," and the federal question is characterized as "unsubstantial."

On this understanding of the practical operation of the above quoted rule, this respondent submits that the petitioner's complaint does not present a substantial federal question.

An examination of the Railway Labor Act discloses no language or declared purpose evidencing an intention on the part of Congress to legislate on the subject of jurisdictional disputes between labor organizations or crafts of employees. The specific provisions of the Act relied upon by the petitioner as the source of the exclusive bargaining authority asserted in this action are simple, unambiguous provisions directed to other subjects and not designed to accomplish the objects sought by the plaintiff. This conclusion was subscribed to by the Circuit Court of Appeals, when it said:

> "The Railway Labor Act does not undertake to say what matters shall be considered the business of each particular craft. It does not define the crafts or classes of employees, and forbids any effect to be given classifications made for other purposes by the Interstate Commerce Commission; Section 151, Fifth." (132 F. 2d 91, 94.)

A detailed discussion of the "bargaining" provisions of the Railway Labor Act appears later in the Argument. We think it unnecessary to repeat that material here. But on the basis of this later analysis of the Act, and the foregoing views, this respondent submits that the federal question presented by the petitioner's First Amended Complaint is unsubstantial and inadequate as a basis of federal jurisdiction.

The Terms of the Railway Labor Act Do Not Authorize, And Its Purposes Do Not Justify, This Action.

This action is predicated upon implications derived from certain provisions of the Railway Labor Act,—implications which are being projected to their logical extremities, but which are not justified by the plain language of the Act. This action, if successful, will make of the Railway Labor Act a device for the aggrandizement of one union and the craft it represents, through the process of denying to another craft the means of protecting and promoting its own interests through competition with the former craft.

That these results will follow this perversion of the Railway Labor Act—indeed, that the Engineers' Brotherhood intends that they shall follow—must become apparent to anyone acquiring an understanding of the interrelation of the engineers' and firemen's crafts in normal railroad operation and the forces at play within these crafts. Once having acquired an understanding of this interrelation and these forces, there will remain for this Court only the question whether the Railway Labor Act must or should be lent to the accomplishment of these untoward results.

An explanation in considerable detail was made earlier in the Statement of the Case, of the mutual advantages that accrue to each craft, and to the carrier, if the shifting of employees between the two crafts is permitted under terms and conditions that require each craft to contribute to the welfare of the other, but which, at the same time, place neither craft at the mercy of the other. It was explained that the opportunity of working as an engineer is striven for by an employee from the time he begins work as a fireman because of the advantages if offers in terms of pay, conditions of work and prestige of the position. Entrance into the craft of engineers involves long years of effort as a fireman, and much study and preparation is required in order to meet the tests and qualifications that con-

dition entrance into the engineers' craft. These considerations led the Firemen's Brotherhood to establish, through agreements that have long since been in effect on virtually all the railroads of the country, a system of rules and regulations governing the promotion of firemen into the engineers' craft. An opportunity for promotion is now assured the firemen under these rules in the order of their seniority as firemen. In fact, firemen are compelled in their proper turn to qualify for promotion to engineer, or be dismissed from the service of the carrier. This is done to prevent firemen, after reaching the upper regions of the firemen's roster, from "roosting" there, to the prejudice of the younger firemen and the quality of material available for promotion into the engineers' craft.

It was further explained that the periodic, sometimes daily, fluctuation in traffic has the effect of unstabilizing the quota of engineers needed by a railroad. This circumstance created a problem for both crafts, for it meant unemployment at times for a substantial percentage of the engineers, particularly in the regions of the country where traffic was highly seasonal, unless they could return to work as firemen. And if they were returned to firing, it meant hardship for the regular firemen, not only because the furloughed engineers could command on the basis of seniority the choicest of the firing jobs, but also because each furloughed engineer who returned to firing forced one regular fireman at the bottom of the roster out of a job entirely, and displaced the remaining firemen one position downward on the firemen's working lists.

This problem, in turn, created a third problem for the two crafts, for with the firemen's craft undertaking to bear the hardships incident to serving as a buffer for the periodic unemployment occurring in the engineers' craft, the terms and conditions under which demoted engineers would be removed from firing and returned to work as engineers became, naturally enough, an issue between the two crafts.

These three problems were resolved from 1913 to 1927 by a compromise of interests that took the form of the Chicago Joint Agreement between the two Brotherhoods. By this Agreement, the members of the two crafts and the two Brotherhoods composed their differences on these subjects, and the two chief executives issued a tremendous number of joint opinions designed to promote the uniform application on the railroads throughout the country of the terms of the Chicago Joint Agreement, which had, in the meantime, been incorporated by agreement with the carriers in the engineers' and firemen's schedules on most of the railroads. This period of relations in which the two crafts sought to meet their joint problems by joint action, through agreement and compromise, was brought to an end at the instance of the Engineers' Brotherhood on October 1, 1927.

No perspicacity is required by anyone having a fair understanding of the foregoing facts and history, to recognize where the interests of the engineers' craft lie in this field of conflicting interests between the two crafts. *They lie in the employment at all times of as few engineers as possible.* That is to say, the constant objective of the engineers' craft and its representative is to spread the work available to the engineers' craft among as *few* engineers as possible. The attainment of this objective requires an advancement of the maximum mileage limitations that have been applicable to engineers, or the elimination of these limitations altogether from the rules. To attain their objective, engineers should be removed from the engineers' working lists promptly with decreases in traffic, and demoted engineers should be returned to the engineers' working lists only upon clear demonstration that the current force of engineers is unable to absorb the work available to them. Operation under these principles would be the means by which the most lucrative and desirable employ-

ment available on a railroad could be divided among, and be enjoyed by, the fewest.

The complete attainment of this objective of the engineers' craft has, however, thus far been prevented through the competition provided by the firemen's craft. For it is to the interest and welfare of the firemen's craft that the carrier be induced to support principles directly opposed to those championed by the engineers' craft. The firemen want to be assured that their entrance into the engineers' craft will not be governed by the whim or personal choice of a third party. They want to be assured that this entrance will be orderly, in accordance with their seniority as firemen, and that these terms and conditions will be protected through the efforts of their representative. They want the lucrative and desirable work of the engineer to be made available to as large a number of men as possible, consistent with the maintenance of a reasonable individual income. They want the engineers' craft to bear as much of the burden of its own unemployment as can feasibly be done. To accomplish this requires the observance of minimum mileage limitations by the engineers, to which limits the mileage averaged by the engineers must be allowed to drop before any engineer will be furloughed and returned to firing. And it requires the observance of maximum mileage limitations above which the average may not arise without demoted engineers being recalled to service.

There are thus in play at all times opposing forces between the two crafts. Each craft bids for the carrier's endorsement of such rules and regulations as will promote its fundamental objective in these respects. The fruit of this competition has generally been a compromise of views by the contestants. The carrier has been able to take a moderate, middle-of-the-road course between the extremes that either of these two forces might otherwise force it to

subscribe to, if left unbalanced by the elimination of one of them.

If the petitioner succeeds, through the approbation of this Court, in establishing its hypothesis as a reality, the engineers' craft and its representative will henceforth be freed from the scourge of competition in a field which they, for nearly forty years, have been forced to share with the firemen's representative. They will have acquired exclusive bargaining jurisdiction in this field. Their economic power, which in the past has been insufficient to enable them to dominate this field, will have been buttressed by a statutory grant of monopolistic power. There will henceforth be only the carrier for them to contest with. The firemen's representative will be denied the right to be heard on these three subjects which control to a substantial degree the welfare of the firemen's craft, and about which it has assumed without question from any quarter to bargain with the carriers since collective bargaining became an established practice in the railroad industry.

These are the consequences which the petitioner would have this Court generate through the adoption of its "construction" of the Railway Labor Act.

It is the respondent's contention that the Act contains no language nor expressed purpose that would justify such consequences, and, furthermore, that only the most unequivocal command by Congress should suffice to induce this Court to deny to the employees constituting the firemen's crafts on the railroads of the country, the opportunity of being heard through their representatives for the protection of their interests in this field of joint concern to both crafts.

The Terms of the Railway Labor Act Relied Upon by the Petitioner Have No Apparent Bearing Upon Jurisdictional Disputes Between Labor Organizations or the Crafts Represented by Them.

Let us examine the process by which the petitioner's theory of exclusive representation is derived from the Railway Labor Act. It begins with Section 2, Fourth, of the Act, which provides that "Employees shall have the right to organize and bargain collectively through representatives of their own choosing." This is, of course, nothing more or less than a legislative affirmation of the principle of collective bargaining.

The second step is the succeeding sentence in Section 2, Fourth, which reads, "The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act." This provision was designed to eliminate the undemocratic control of a craft or class by a labor union representing only an organized minority. Majority rule, without regard for union affiliation, thus became the established rule. This becomes evident by a reading of Section 2, Third, of the Railway Labor Act as enacted in 1926 (44 Stat. 578), which is the precedent for Section 2, Fourth, of the Act as amended in 1934. It reads as follows:

> "Representatives, for the purposes of this Act, shall be designated by the respective parties in such manner as may be provided in their corporate organization or unincorporated association, or by other means of collective action, without interference, influence, or coercion exercised by either party over the self-organization or designation of representatives by the other."

The petitioner, in the further development of its theory, points to Section 2, First, which declares that it shall be the duty of carriers and their employees "to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions," and

then there follows the admonition in Section 2, Ninth, to carriers to treat with the certified representative "as the representative of the craft or class for the purposes of this Act,"

From this Congressional plan for collective bargaining through certified representatives chosen by the majority of the employees within a craft or class, the petitioner derives implications of a scheme for the statutory elimination of all jurisdictional disputes between labor unions or the crafts they represent. How this is done is explained by the petitioner in one sentence of its brief, as follows:

> "The reasons which support and justify the holding that the right of majority craft representation is exclusive are equally persuasive that it was the intent of Congress in enacting the Railway Labor Act to restrict the 'rules and working conditions' concerning which the craft, through its representative, has the right to contract" (Brief, pp. 45-46).

There it is in a nutshell. If the Congress had reasons that justified permitting a craft or class of employees to have only one representative, that is, justified exclusive representation of a craft or class, then, the petitioner reasons, "*it is equally persuasive that it was the intent of Congress*" (though Congress didn't say so) *to also prescribe exclusive fields of bargaining jurisdiction.* In short, the idea is that if Congress thought exclusive representation of a craft or class would be a good thing, then it ought also to be a good thing to divide the legitimate subjects of collective bargaining between carriers and their employees into divisions or groups of subjects and make of each of these an exclusive field of bargaining by one representative. The petitioner assumes to legitimize its proposal by pointing to the goal of industrial peace. It explains:

> "If the designated representative of each particular craft does not have the exclusive right to bargain with the Carrier within definable limits, and if the jurisdiction of a craft within which the exclusive right

may be exercised is not limited, then disputes between various crafts will result in defeating the express purposes of the Act. * * * Dual representation of any kind will render the Act ineffective. When Congress adopted the 1934 amendments of the Railway Labor Act and established majority rule for crafts for the purposes of the Act, we submit dual representation of all kinds was eliminated from railroad labor relations." (Brief, p. 46)

In weighing the petitioner's proposal, we suggest that three items in particular should be kept in mind by the Court.

First, Congress has specifically denied any intention of legislating on the powers or jurisdiction of railway labor organizations. Its disclaimer of regulation on this subject is contained in Section 1, Fifth, of the Act, and reads as follows:

"The term 'employee' as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders: Provided, however, That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, *nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission.*" (Italics ours)

Congress has thus declared that the *jurisdiction or powers* of labor unions organized or joined by crafts of employees are not to be regarded as "*in any way limited*

or defined by the provisions of this Act." By *jurisdiction or powers*, the Congress must of necessity have meant the *subject matter or field* with respect to which a labor organization representing a craft of employees would normally assume to bargain on behalf of the craft. Sometimes the crafts or groups of employees which a labor organization assumes to represent or include within its constituency are referred to as the union's "jurisdiction." But this cannot be the sense in which the word jurisdiction is used in Section 1, Fifth, because the union's jurisdiction or powers is referred to in the sentence as something different from, or in addition to, the employees that may be combined within one craft and represented by one representative. So Congress must have intended by this provision to disclaim doing precisely the thing which the petitioner contends it did do in this instance, to-wit, limit the bargaining jurisdiction of the Firemen's Brotherhood.

Second, the petitioner's proposal takes no account of the fact that the rules or regulations governing one subject may directly affect or control the earnings or working conditions of two or more crafts, either in similar or in diverse ways. The petitioner proposes to ignore realities. It would deny to one craft or class the right to protect its vital interests, and would place the welfare of that craft or class at the mercy of another craft having opposing interests, itself in this instance.

Third, the petitioner's own explanation of the origin of its hypothesis acknowledges that it is not spelled out in the Railway Labor Act. It admits that Congress did not declare in specific language that there were to be exclusive areas of bargaining jurisdiction covering *all* the "wages, rules, and working conditions" pertaining to each of the several crafts or classes of employees serving a carrier. It only says that there are reasons which are *persuasive* of the belief that it was the *intent* of Congress to define jurisdictional boundaries.

We are reminded of the *caveat* expressed by this Court, when urged by another petitioner under similar circumstances to discover meaning when it had not been articulated by the Congress, in the following language:

> "And so we have one of those problems in the reading of a statute wherein meaning is sought to be derived not from specific language but by fashioning a mosaic of significance out of the innuendoes of disjointed bits of a statute. At best this is subtle business, calling for great wariness lest what professes to be mere rendering becomes creation and attempted interpretation of legislation becomes legislation itself." (*Palmer v. Commonwealth of Mass.*, 308 U. S. 79 (1939).)

The Means by Which the Petitioner Seeks to Attain Its Ends Are Contrary to the Principle Underlying the Railway Labor Act.

The principle underlying the Railway Labor Act is the avoidance of industrial warfare through the airing of grievances by their discussion around the conference table. By this process it is anticipated that tolerance, understanding, compromise and ultimate agreement will supplant strikes and lockouts.

The petitioner, in contrast to this principle, proposes that "peace" between the engineers' craft, the firemen's craft and the M-K-T Railroad be attained by precisely the opposite procedure, to-wit, by suppressing the right of the firemen's craft to have its interests represented and its grievances aired in connection with matters that vitally affect its welfare. Perhaps it was a distrust of the principle relied upon by Congress for the successful operation of the Railway Labor Act, that caused the Engineers' Brotherhood to disdain the efforts of the National Mediation Board and of the M-K-T Railroad in 1940 to have it participate in the conferences between the Firemen's Brotherhood and the M-K-T Railroad for the purpose of

composing the differences that resulted in the Mediation Agreement, and spawned this litigation (R. 161, 163, 164).

It is significant in this connection to remember that collective bargaining was an established institution in the railroad industry when the Railway Labor Act was first enacted. As stated in the picturesque language used by Judge Atwell, before whom this case was originally heard in the United States District Court for the Northern District of Texas:

> "There is another, I think a very strong reason for this all-inclusive settling act, with reference to railroads. As has already been said in argument, it did not enter a new field, the field was already known, it was already fallow, it was already plowed, it had been harvested, everything, every marker, every bearing was known in that field, all the soil was known, all the seasons that play upon it, all the crops that spring from it, of both discord and unity, everything was known that is now known with reference to these controversies; and we cannot say that there is anything not included in the Act." (R. 75)

The Railway Labor Act did bring to the field of employer-employee relations in the railroad industry, as something new, the conciliation and mediatory services of the National Mediation Board, the adjustment processes of the National Railroad Adjustment Board, and a statutory plan of arbitration. But to collective bargaining itself, the Act did little more than formally legalize an existing institution, and buttress it with certain procedural restrictions and conditions (Sec. 2, Sixth, and Seventh; Sec. 6).

The net effect of these latter provisions was to impose as a duty on *all* carriers alike the procedure of collective bargaining which had previously been undertaken voluntarily by most carriers prior to the enactment of the Act. It assured to the employees of all carriers complete independence from the carrier and freedom of action in the selection of a representative, and it assured to the em-

ployees' representative an opportunty of meeting with the representative of the carrier and having their demands or grievances discussed and considered.

There was henceforth to be no repetition of the tactics of reactionary management, such as were indulged in by the defendants in *Texas & New Orleans R. Co. v. Brotherhood of Ry. & S. S. Clerks*, 281 U. S. 548 (1930), and *Virginian R. Co. v. System Federation No. 40*, 300 U. S. 515 (1937). In each of these instances the defendant carrier had sought to interfere with the right of its employees to organize, or to designate, an independent labor organization to act as their representative. It had done this by undertaking to foster a rival "independent" association among its employees, and by refusing to recognize and bargain with the representative that had been demonstrated to be the choice of a majority of its employees. It was to this state of affairs that this Court was addressing itself when it so correctly declared the duty of the carrier, in the latter case, to be as follows:

> "The obligation imposed on the employer by section 2, Ninth (45 U. S. C. A., Sec. 152, subd. 9), to treat with the true representative of the employees as designated by the Mediation Board, when read in the light of the declared purposes of the act, and of the provisions of section 2, Third and Fourth (45 U. S. C. A., Sec. 152, subds. 3, 4), giving to the employees the right to organize and bargain collectively through the representative of their own selection, is exclusive. It imposes the affirmative duty to treat only with the true representative, and hence the negative duty to treat with no other."

This Court could not, in the opinion of this respondent, have more appropriately declared the duty of a carrier toward its employees and their representative under the circumstances obtaining in these cases than it did in this instance. We are equally confident that it would be a misapplication of principle and a perversion of language to

point, as the petitioner does, to the above quotation as the rule that should govern the disposition of the instant case.

Here there has been no interference with the designation of the petitioner as the representative of the engineers' craft. There has been no interference by either the M-K-T Railroad or this respondent with the petitioner's performance of its obligations as the representative of the engineers' craft. *In entering into the Mediation Agreement the Firemen's Brotherhood did not assume to represent or act on behalf of the engineers' craft in the least degree.* What it did in this respect was done solely on behalf of the firemen's craft, though, admittedly, consequences flowed from its acts that affected the engineers.

The engineers' craft has had every opportunity contemplated by the Railway Labor Act to choose its representative, and to be represented by it in all matters affecting the craft. Every desired opportunity for conferences, the presentation of views, and the representation of interests were accorded both Brotherhoods by the M-K-T Railroad and the National Mediation Board during the long period of negotiations preceding the execution of the Mediation Agreement.

In short, the processes prescribed by the Railway Labor Act and the duties declared by this Court in the *Virginian* case have been adhered to, both in their letter and spirit, by all parties throughout the whole of this controversy, with the exception of the refusal of the Engineers' Brotherhood to participate in the three-party conferences proposed by the M-K-T Railroad and by the National Mediation Board.

We suggest that the petitioner's grievance, represented by this action, has been improperly directed against the M-K-T Railroad. Its grievance should lie, instead, against the Congress for having embraced, when it enacted the Railway Labor Act, the principle that open and

frank discussion of grievances by carriers with their employees is the surest and most direct road to industrial peace. The Congress declared this to be the principle underlying the Act when it said:

> "*All disputes* between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and *by the employees thereof interested in the dispute.*" (Sec. 2, Ninth, Railway Labor Act) (Italics ours.)

The wisdom of this principle was affirmed by the Circuit Court of Appeals for the Fifth Circuit when it rejected the petitioner's demand that the right of the Firemen's Brotherhood to be heard and to bargain on matters of vital concern to the firemen's craft be suppressed, and expressed its views as follows:

> "The statute (Railway Labor Act) thus recognizes, what is the practical truth, that no conference or agreement will end a dispute unless all who are really interested are represented. The most bitter and perhaps the most numerous industrial disputes have come to be those in which classes of employees dispute with their employer and one another over who has the right to control a particular matter; the so-called jurisdictional disputes. Regardless of who may be right or wrong, such a dispute can be settled justly only by a tri-partite agreement. This is true of the present dispute." (132 F. 2d 91, 94)

Thus, in terms indicative of strong conviction did the Circuit Court disapprove of the plan now proposed by the petitioner as the route to industrial peace.

In this connection, we suggest that the idea that industrial peace would be realized, or even promoted in the slightest degree, by vesting in the Engineers' Brotherhood the exclusive privileges sought by them is wholly fanciful. Imagine the state of relations between the members of the

engineers' craft and the firemen's craft that would inevitably develop if the latter were enjoined to stand silently by while the representative of the engineers' craft proceeded to extract from the carrier agreements covering the three subjects of joint concern to both crafts, establishing rules and conditions that advantaged the engineers' craft and neglected the welfare of the firemen's craft? The only conceivable weapon by which the firemen's craft could combat such a move would be its theoretical right to prevent furloughed engineers from returning to firing. But no one could fail to anticipate the violent opposition that a carrier would justifiably exert against a move of this character. The ill feelings and desperation that this new state of relations would engender in all three parties would, to put it mildly, fall considerably short of that state of harmony that Congress undoubtedly wistfully hoped for as the fruit of its enactment. This goal of industrial peace professedly sought by the Engineers' Brotherhood as the object of this litigation, deserves to be questioned. We think it appropriate to recall the acrid observation of Chief Justice Hughes when he said:

> "Motive is a persuasive interpreter of equivocal conduct, and the petitioners are not entitled to complain because their activities were viewed in the light of manifest interest and purpose." (*Texas & N. O. R. Co. v. Brotherhood of R. & S. S. Clerks*, 281 U. S. 548, 559.)

The Decision by the Circuit Court of Appeals Was Consistent With the Railway Labor Act.

The Circuit Court of Appeals held in this case that the only manner in which jurisdictional disputes or craft conflicts, such as the instant one, can ultimately be settled is by compromise and agreement between the parties. It summarized its opinion as to the validity and effect of the Mediation Agreement in the following manner:

"We cannot say the agreement thus reached violated any law and is void, but it is incomplete. The engineers are not bound by it, and the carrier is not protected against the discontent of the engineers, and the peace of transportation is not secured. The contending parties would now perhaps most wisely seek a new negotiation participated in by all. If no agreement can be had, the carrier will be left free to revoke all agreements on this subject as provided by the Act, Sect. 156, and may make its own rules." (132 F. 2d 91, 94)

The Court thus declared that the Mediation Agreement was a lawful undertaking between the M-K-T Railroad and the Firemen's Brotherhood. In saying that the agreement is "incomplete," that the engineers are not bound by it, and that the carrier is free to "revoke" the agreement under Sec. 156 (Sec. 6) of the Railway Labor Act, we understand the Court to mean that while the agreement remains in effect and is not withdrawn from by the carrier in the manner prescribed by Sec. 6 of the Railway Labor Act, it is a valid and binding obligation on the M-K-T Railroad and the Firemen's Brotherhood. But the Engineers' Brotherhood is not precluded during its existence from inducing, or attempting to induce, the M-K-T Railroad to enter into another and different agreement with it covering the same subject matter. That is to say, unless, and until, a tri-partite agreement is consummated between the M-K-T Railroad and the two Brotherhoods on this subject matter, the *continuing right* of any craft of employees subject to the Railway Labor Act, having a grievance, to seek conferences with the carrier and to dispose of the grievances through agreement with the carrier, precludes the carrier and one Brotherhood from placing the cause of the grievance, by agreement or otherwise, beyond the reach or efforts of the other Brotherhood to dispose of the grievance by another and different agreement.

If our understanding of the Circuit Court's decision in this respect is correct, and we are confident that it is, then the Court's decision is, we submit, consistent with the Railway Labor Act, and it should be sustained by this Court.

The Subjects of Joint Concern to Both the Engineers' and Firemen's Crafts Are, by Their Nature, Limited to a Few Subjects.

The petitioner devotes some space in its brief to making the point that if the Mediation Agreement is a valid agreement because of the fact that the firemen's craft has an *interest* in the subject matter of the agreement, then it would be consistent to permit the firemen's representative to negotiate agreements with the M-K-T Railroad on virtually all the subjects covered by the more than seventy-seven Articles comprising the engineers' schedule of wages, rules, and working conditions in effect on that railroad (Plaintiff's Ex. No. 1; R. 96, 97-104). This is said to be true because the firemen, as companion employees to the engineers, or as potential engineers destined to some day "inherit" the working conditions established by the engineers' schedule, have an "interest" in the merits of these rules.

We decline to believe that so far-fetched an argument is advanced in seriousness. The subjects or items directly affecting the prosperity and welfare of both crafts, and with respect to which the firemen's craft has traditionally assumed to negotiate and bargain with all carriers generally, have been limited to three in number. These are, as we have said, (1) the entrance of firemen into the engineers' craft through promotion; (2) the terms and conditions under which furloughed engineers will be returned to firing service, and (3) the terms and conditions under which furloughed engineers will be removed from firing service and

returned to work as engineers. This fact is understood equally well by all parties concerned. The three items comprising the Mediation Agreement are, as we have previously pointed out, integral parts of these subjects. There is not one word or suggestion in the record of the negotiations between the Firemen's Brotherhood and the M-K-T Railroad preceding the institution of this suit, or in the record of the relations between the two Brotherhoods, indicating a purpose or intent on the part of the firemen's craft to concern itself with the wages, rules, or working conditions pertaining to the engineers' craft, except as they may be affected or influenced by the terms and conditions governing these three subjects.

As we have already pointed out, the Chicago Joint Agreement, in so far as it pertained to rules governing the employment of engineers and firemen, covered only three subjects. We think the mutually-agreed jurisdictional spheres of the two Brotherhoods, *as set forth in the introductory article to the Chicago Joint Agreement*, reflect significantly upon the position taken by the Engineers' Brotherhood in this litigation, and especially on the argument that the firemen have an "interest" in all of the engineers' rules and working conditions.

The two Brotherhoods first agreed in this introductory article that "the right to *make* and interpret *contracts, rules, rates and working agreements for locomotive engineers shall be vested in the regularly constituted committee of the Brotherhood of Locomotive Engineers.*" They next agreed that "the right to *make* and interpret *contracts, rules, rates and working agreements for locomotive firemen shall be vested in the Brotherhood of Locomotive Firemen and Enginemen*" (R. 233, 237, 244). *They then proceeded to jointly establish the terms and conditions that were to govern the movement of employees between the two crafts, that is, the terms and conditions governing the three subjects that jointly concerned the two crafts.* And these

terms and conditions were thereafter incorporated, by agreement with the carriers, into their respective schedules in effect on all railroads generally.

The implication to be derived from these facts is clear. It is that the three subjects covered by the terms and conditions agreed upon in the Chicago Joint Agreement were not considered by the Engineers' Brotherhood in 1913, nor in 1918, nor in 1923, as constituting a part of the "rules, rates, and working agreements" that normally belong to the exclusive bargaining jurisdiction of the Engineers' Brotherhood. Any other conclusion than this drawn from these facts would not be consistent with normal human conduct, for men do not normally belie through deeds the principles which they, in the preceding moment, professed adherence to in words.

Yet in the face of this record of admission that there are fields of exclusive jurisdiction belonging to each of the two Brotherhoods and also a field of joint interest or overlapping jurisdiction, the Engineers' Brotherhood now takes the stand that the "rates of pay, rules, and working conditions" which are naturally and normally within the exclusive bargaining jurisdiction of the engineers' representative *include* the terms and conditions governing the three subjects covered by the Chicago Joint Agreement.

The *interest* of the firemen's craft in the subject of promotion of firemen, the return of demoted engineers to firing, and their subsequent reemployment in engineer work, is not an intangible, nor an indirect or future interest as the petitioner seeks to characterize it. The firemen's interest in these subjects is *direct*, *immediate* and *financial*. It is direct because the certain and inevitable consequence to the firemen is a lowering of their positions on the working lists through the process of "bumping" whenever an engineer is demoted, or an improvement of their positions on the working lists whenever a demoted engineer is returned to work as an engineer. Their interest is *imme-*

diate, not future, for these rules determine whether or not a fireman will presently be "bumped" because an engineer has been furloughed and is demanding his job; or whether, as in the case of the rules covered by the Mediation Agreement, a demoted engineer working as a fireman will presently be allowed to work as an emergency engineer, or whether that job will instead be given to an engineer to swell the latter's mileage. The interest is *financial* because these rules determine to a substantial degree the relative position that the firemen, as distinguished from demoted engineers, occupy on the firemen's working lists, or, as in the Mediation Agreement, determine whether a man shall earn the wages of a fireman or the wages of an engineer.

The Position Taken by the Carrier In This Controversy.

The petitioner seeks to attach considerable significance to the opinions expressed by the Vice-President and General Manager of the M-K-T Railroad during the course of the negotiations preceding the execution of the Mediation Agreement (Petitioner's brief, pp. 15-19, 60-63). During these negotiations, this officer expressed opinions in line with the views here urged by the petitioner, but he later abandoned the position he had taken because, the petitioner contends, of the firemen's threat of a strike if he did not come to an agreement with them.

We believe that the position taken by the carrier in respect to its right to enter into the Mediation Agreement with the Firemen's Brotherhood should be recognized by this Court as a fact of significance in deciding this case. We therefore take occasion to point out the misconceived notions of the petitioner as to the position taken by the M-K-T Railroad.

First, the views expressed by the Vice-President and General Manager, as to the bargaining jurisdiction of the

two crafts or of their respective representatives under the Railway Labor Act, were the views of a layman.

Second, the considered position taken by the M-K-T Railroad in this litigation is succinctly stated in paragraph 7 of its Answer, as follows:

> "These defendants deny that said Mediation Agreement is an unlawful interference with the rights of said craft of engineers to negotiate exclusively through its designated representatives with respect to rules and working conditions governing said craft or class, and deny that it is an unlawful interference with the rights of said craft or class to have rules and working conditions governing it determined by its representatives." (R. 51)

Third, after extensive and repeated efforts on cross-examination, the most that the petitioner was able to elicit from the Vice-President and General Manager was an admission that the firemen's threat of a strike "*might have influenced me a little*" in abandoning the contention that the Firemen's Brotherhood, in seeking an agreement on the items covered by the Mediation Agreement, was invading the exclusive bargaining jurisdiction belonging to the Engineers' Brotherhood (R. 201). As a matter of fact, the real and substantial cause of the Vice-President's change of position, as explained by him on cross examination, was the conviction that if he did not voluntarily come to an agreement with the Firemen's Brotherhood on terms such as were incorporated in the Mediation Agreement (which represented a compromise), the Firemen's Brotherhood would continue to insist on the more drastic rules requested in its original notice to the M-K-T Railroad (R. 208). The dispute would probably have ultimately reached a "fact finding committee, or emergency board," and if this occurred the Vice-President feared that the requests of the firemen's Brotherhood would be sustained, at least in part. This would constitute a refutation of the

Vice-President's position, and the establishment of a rule or rules that would operate, on occasions, in a manner to penalize the M-K-T Railroad. He therefore deemed it expedient to abandon his position, and consent to the terms of the Mediation Agreement (R. 199-201).

We submit that one cannot read objectively the Vice-President's explanation of the negotiations preceding the Mediation Agreement, elicited by the petitioner on cross-examination, without acquiring the conviction that the views advanced by this officer during this period represented not so much a firm conviction as to the meaning of the Railway Labor Act, as it did an element useful in strategic bargaining. They were advanced, we believe, with no thought in mind that they might become permanent principles under which the Engineers' Brotherhood would acquire monopolistic bargaining rights over these subjects. When possibilities of this character did become evident by the institution of this suit, the carrier took a position, as we have seen, adverse to the engineers' contention.

The National Mediation Board's Administration of the Railway Labor Act Is Opposed to the Petitioner's Contentions.

The M-K-T Railroad and the Firemen's Brotherhood were brought together and their differences reconciled through the mediatory efforts and influence of the National Mediation Board. The resulting agreement of December 12, 1940 was promoted and sanctioned by the Board as a *lawful* disposition of the dispute prevailing between these two parties.

The Board occupies the status of "an independent agency in the executive branch of the Government" (Railway Labor Act, Section 4; First). The Board functions, in a substantial sense, as an administrator of the collective bargaining provisions of the Act: It has the duty, among

others, when a "dispute concerning changes in rates of pay, rules, or working conditions (is) not adjusted by the parties in conference," "to put itself in communication with the parties to the controversy," and "use its best efforts, by mediation, to bring them to agreement." In discharging its duties in this respect, it goes without saying that any agreement it fosters and ultimately approves as a proper disposition of the controversy is presumably a valid agreement, consistent with the Railway Labor Act. The Board and its staff of aids and advisers must be assumed to be experts in the field of railroad-employee relations. They can be assumed to know the history of collective bargaining in this field, the forces at work, and the language and purposes of the Railway Labor Act.

It is an accepted rule of this Court that the proper interpretation and application of a law "drawn to meet the needs of a major occupation" must be discovered by consulting its environment and its purposes. *United States v. Am. Trucking Ass'ns.*, 310 U. S. 534, 543 (1940); *Southland Gasoline Co. v. Bayley*, 319 U. S. 44 (1943). There is perhaps no agency in the executive branch of the federal government better qualified in a manner consistent with this rule, to arrive at the proper interpretation and application of those portions of the Act under its administration, than is the National Mediation Board.

It should then, we believe, be recognized by this Court as a highly influential fact bearing upon the validity of the Mediation Agreement, that it was promoted and formally subscribed to by the National Mediation Board (R. 28).

CONCLUSION.

The Engineers' Brotherhood seeks by this action to acquire complete and exclusive bargaining authority over the subjects covered by the Mediation Agreement and the field of collective bargaining of which these subjects are a part. This field is claimed by the Engineers' Brother-

hood as one naturally subject to control by the engineers' craft, and one that the Railway Labor Act has placed within the exclusive bargaining jurisdiction of the Engineers' Brotherhood.

The District Court had the advantage afforded by trial procedure of becoming acquainted with all of the details of fact as well as the law involved in this action. The decision of the District Court on this claim of the Engineers' Brotherhood is summarized by the following quotation from its opinion:

> "If we take another step, we have a case clearly in territory that is not 'no man's', but a territory that belongs to two men. It is an overlapping territory. It is a territory in which both the Third Party defendant and the plaintiff have a right to tread, and have a right to treat, and have a right to contract concerning. *There cannot be any controversy about that; no just eye can look at it in any other way.*
>
> "The demotion of a fireman, the demotion of an engineman, the promotion of a fireman, or the promotion of an engineer, after demotion, the increase of the engineers' rank, the rotating downward of potential engineers, known as firemen, the one gravitating to the other, and the other gravitating to the one, interchangeably operating; friends working together in the same cab, on the same engine, are so close and so constantly passing from one territory to the other, that both have a right under the statute to act. And I think that the defendant had a right to bargain with the Firemen and Enginemen with reference to the matter that effected that particular craft. I am sure that the defendant would have had a right to have bargained with the engineers with reference to anything that affected that particular two-man territory, that overlapped, or overlapping territory, or, that territory that belonged to both. See *Virginian Ry. Co. v. System Federation*, 300 U. S. 515. *And, it seems to me that what the Firemen and Enginemen contend for is righteous, that is the way it looks to me in their controversy with the Engineers.*

"We have a quick conscience in America, and the detailing of a situation itself simply precludes any mind not affected with interest from viewing it in any way except as I have indicated." (R. 76-77.) (Italics ours.)

We suggest that this Court should give serious regard to the District Court's decision rejecting the petitioner's contention when it is expressed in language as positive and vigorous as the foregoing.

We submit that the judgment and decree of the Circuit Court of Appeals should be affirmed.

Respectfully submitted,

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General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen.

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Nos. 23, 27, 41

In the Supreme Court of the United States

OCTOBER TERM, 1943

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE MISSOURI-KANSAS-TEXAS RAILROAD, AN UNINCORPORATED ASSOCIATION, PETITIONER

v.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, A CORPORATION, ET AL.

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE PACIFIC LINES OF SOUTHERN PACIFIC COMPANY, AN UNINCORPORATED ASSOCIATION, PETITIONER

v.

SOUTHERN PACIFIC COMPANY, A CORPORATION, ET AL.

GENERAL GRIEVANCE COMMITTEE OF THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, AN UNINCORPORATED ASSOCIATION, PETITIONER

v.

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE PACIFIC LINES OF SOUTHERN PACIFIC COMPANY, AN UNINCORPORATED ASSOCIATION, AND SOUTHERN PACIFIC COMPANY, A CORPORATION

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURTS OF APPEALS FOR THE FIFTH AND NINTH CIRCUITS

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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Daugherty, Carroll R., *Labor Problems in American Industry* (Rev. ed., 1938) 60

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H. Rep. 1944, 73d Cong., 2d Sess. 56, 72, 75

H. R. 7650, 73d Cong., 2d Sess. 56

H. R. 6288, 74th Cong., 1st Sess. 78

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Lorwin and Wubnig, *Labor Relations Boards* (Brookings Institution, 1935) 74

National War Labor Board, *Principles and Rules of Procedure*, reprinted in United States Department of Labor Annual Report for 1919, p. 1273 67

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Spencer, *The National Railroad Adjustment Board* (University of Chicago Press, 1938) 64

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In the Supreme Court of the United States

October Term, 1943

No. 23

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE MISSOURI-KANSAS-TEXAS RAILROAD, AN UNINCORPORATED ASSOCIATION, PETITIONER

v.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, A CORPORATION, ET AL.

No. 27

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE PACIFIC LINES OF SOUTHERN PACIFIC COMPANY, AN UNINCORPORATED ASSOCIATION, PETITIONER

v.

SOUTHERN PACIFIC COMPANY, A CORPORATION, ET AL.

No. 41

GENERAL GRIEVANCE COMMITTEE OF THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, AN UNINCORPORATED ASSOCIATION, PETITIONER

v.

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE PACIFIC LINES OF SOUTHERN PACIFIC COMPANY, AN UNINCORPORATED ASSOCIATION, AND SOUTHERN PACIFIC COMPANY, A CORPORATION

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURTS OF APPEALS FOR THE FIFTH AND NINTH CIRCUITS

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINIONS BELOW

The opinion of the Circuit Court of Appeals for the Fifth Circuit in No. 23 (R. 295–300) is reported at 132 F. (2d) 91. The opinion of the Circuit Court of Appeals for the Ninth Circuit in Nos. 27 and 41 (R. 792–826) is reported in 132 F. (2d) 194. The district courts rendered no opinions; their findings may be found at No. 23, R. 70–78, and in Nos. 27 and 41, R. 44–57.

JURISDICTION

The jurisdiction of this Court in these cases is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1935.

QUESTIONS PRESENTED

This Court has requested the parties to discuss the following questions:

1. Whether resort to the declaratory judgment procedure is proper under the circumstances.

2. Whether any questions of the construction of the contracts involved are governed by state or federal law.

3. What bearing, if any, the Norris-LaGuardia Act has on the propriety of granting the relief sought.

The other questions presented are:

4. Whether, when the craft of engineers is represented by another organization, the Railway Labor Act is violated by certain provisions in

collective bargaining agreements between the representative of the craft of firemen and a carrier which determine what persons shall be called to service in the craft of engineers or relate to the advancement of firemen to engineers' positions and the demotion of engineers to firemen's positions.

5. In No. 27, whether the Railway Labor Act is violated by a provision in the collective bargaining agreement between the representative of the firemen and the carrier which permits the firemen's organization to represent individual engineers in the handling of grievances.

STATUTE INVOLVED

The statute involved is the Railway Labor Act, as amended in 1934, 48 Stat. 1185, 45 U. S. C., Section 151, *et seq.* Copies of the Act are attached as an appendix to this brief.

STATEMENT

No. 23 is an action by the General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad against that railroad for a declaratory judgment that certain provisions of a contract between the railroad and the Brotherhood of Locomotive Firemen and Enginemen were violative of the Railway Labor Act and therefore unlawful in that they infringe upon the right of the Brotherhood of Engineers to represent the craft of engineers. Nos. 27 and 41 are a petition and

cross-petition for certiorari in an action instituted by the General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Pacific Lines of Southern Pacific Company against the Southern Pacific Railroad for a similar declaratory judgment with respect to certain provisions of the collective agreement between the Brotherhood of Locomotive Firemen and Enginemen and that railroad. In each case, the General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen intervened as a third-party defendant. Although the contract provisions involved in the cases are not identical, Nos. 23 and 41 raise the same issue, and it seems appropriate to deal with all the questions presented in a single brief. For purposes of convenience, we shall hereafter refer to No. 23 as the *M-K-T* case, to Nos. 27 and 41 as the *Southern Pacific* case, to the Engineers' Brotherhood and the respective engineers' committees as the "Engineers" and to the Firemen's Brotherhood and the respective firemen's committees as the "Firemen".

Factual Background.—The factual background of both cases is substantially the same. Under collective bargaining agreements on most railroads, including the M-K-T and the Southern Pacific, employees are hired as firemen and immediately begin to acquire seniority as such. After a certain period, the firemen are required

to take a test to qualify them for service as engineers, and they lose their firemen's seniority and, on some roads, their jobs, if they do not pass these tests within a certain time. Vacant positions as engineers are filled from the ranks of those who have passed these qualifying tests in order of seniority.[1] When it is necessary to reduce the force of working engineers, those with the least seniority are cut off and are entitled to take positions as firemen in accordance with their firemen's seniority. The firemen with less seniority are "bumped" down the ladder of jobs, with the result that junior firemen are deprived of work and furloughed until their services are needed. When a vacancy occurs in the engineers' ranks, or when the demand for engineers increases, all move up again. (M-K-T R. 230–231, 144–145, 154–155, 282, 289; S. P. R. 151–156, 160–162, 244–246, 279, 281, 293.)

Engineers and firemen constitute different crafts within the meaning of the Railway Labor Act. On almost all roads, the engineers are represented by the Engineers Brotherhood and the firemen by the Firemen's Brotherhood. Most

[1] Some railroads have hired men directly as engineers, but this practice is dying out, except perhaps on some roads in the South, where Negroes may become firemen but are ineligible for promotion to engineers (S. P. R. 280, 236–237, 249–250, 252). The Southern Pacific still has a few hired engineers, but has not engaged any in this manner since 1920 (S. P. R. 137). The M-K-T has hired no engineers since 1916 or 1917 (M-K-T R. 152).

engineers are members of the former and most firemen of the latter. Some, however, are members of both organizations and some of neither. And some men working as engineers belong to the Firemen and some men working as firemen belong to the Engineers. M-K-T R. 167–168 213–214; S. P. R. 146, 151, 195, 197, 268–269.)

In general, engineers are assigned in order of seniority to "regular runs," both passenger and freight, then to pool freight service (which rotates irregular runs among the pool members), and then to engineers' extra boards from which they receive assignments as positions open up. If no engineer in the above categories is available for a job, the senior available qualified engineer working as a fireman is called as an "emergency engineer". (M-K-T R. 141–143, 153; S. P. R. 139, 169–170.)

The reduction and replacement of both engineers and firemen are governed by "mileage" limitations which provide that the average monthly mileage per man on the working lists will be kept within specified limits. Engineers cannot be reduced to firemen's work while the average engineer exceeds the lower mileage limit, and the engineers' list must be enlarged when the average rises above the upper limit. (S. P. R. 604–607; M-K-T R. 147.) The general object of these limitations is to spread the work by avoiding its concentration among too few men. They also protect the firemen against division of

engineers' work among too few engineers; when that happens, the senior engineers perform all of the engineers' work and are highly paid, while the junior engineers descend to the top firemen's jobs, push all firemen down the seniority ladder, and thus force the laying off of junior firemen. The engineers normally prefer high and the firemen low mileage limitations. (S. P. R. 151–153, 159–162, 291–292.)

Between 1913 and 1927, matters of interest to both engineers and firemen were handled under the Chicago Joint Agreement between the two organizations.[2] The Chicago Agreement was abrogated by the Engineers in 1927, but the provisions of the joint schedules were generally continued without change in the separate agreements made by the Brotherhoods with the carriers. (M-K-T R. 232; S. P. R. 201, 247, 259, 261.)

The Chicago Agreement expressly "conceded" the right of engineers and firemen to be represented in the handling of grievances by the organization to which they belonged, subject to "the recognized interpretation" of the organization making the particular agreement involved (S. P. R. 671). It has been the practice for an employee to be represented by the organization of which he was a member in grievance matters, even though that organization was not the designated

[2] See the Chicago Joint Agreement of May 17, 1913 (S. P. R. 669); as revised May [illegible], 1918 (S. P. R. 684); as revised May 1, 1923 (S. P. R. 701).

representative of the craft in which he was working when the grievance arose. The Firemen had customarily represented its members on grievance matters arising when the men were employed as engineers, and the same right has been accorded to the Engineers for its members while they were working as firemen. (S. P. R. 165, 205–208, 234–235, 240–241.)

In the light of this background common to both cases, we examine the facts of each case separately.

No. 23—The M-K-T case.—This case is concerned with the validity of three provisions of the Mediation Agreement made December 12, 1940, between the Firemen and the M-K-T (M-K-T R. 27–32). The railroad in 1918 had entered into a contract with the Engineers on behalf of the engineers' craft, which agreement is still in effect (M-K-T R. 22, 50). That agreement had been interpreted by the Engineers and the carrier during the ensuing years as meaning (1) that (except at Smithville, Texas) when it was necessary to call an engineer for emergency service, the senior available demoted engineer whose home terminal was at the place where the service was required or the man assigned to that particular run as fireman, if he had greater seniority as engineer, would be chosen (M-K-T R. 116–118, 141, 169–170); (2) that the regulation of the engineers' working lists was handled by the Engineers' local

chairman rather than by the management (M-K-T R. 148–149, 158–159);[3] and (3) that at Smithville, instead of calling in emergency engineers when this would otherwise have been done, emergency work would be performed by advancing the assignment of the engineers in the regular pool (M-K-T R. 119–126, 145–146, 191–192, 282–283).[4] These provisions were unsatisfactory to the Firemen, and after they had made unsuccessful complaint to the carrier,[5] and after the latter had tried to bring the two organizations together (M-K-T R. 193), the matter was submitted to the National Mediation Board for mediation (M-K-T R. 172–180). After failure of efforts to resolve the dispute in this way, a strike was authorized by the Firemen (M-K-T R. 198). The Mediation Board again undertook to mediate the

[3] By an exchange of letters in 1923 (M-K-T R. 29–31), it had been agreed that the management would handle assignments, with the cooperation of the local chairman of the organization, but in practice, the function had "drifted" into the hands of the organization (M-K-T R. 158–159).

[4] For example, if there were ten engineers assigned to the pool and one got sick, and no engineer was available on the extra list, the pool work would be divided among the remaining nine engineers in rotation without calling in an emergency engineer. The result would be additional work and compensation for the men already working as engineers, while the firemen would not move up the scale of jobs as they do when the top man is promoted to engineer (M-K-T R. 290).

[5] The carrier originally took the position that the Engineers had jurisdiction over the disputed subjects (M-K-T R. 173, 193).

controversy; it requested the Engineers to participate in the negotiations but they failed to appear (M-K-T R. 163–164). The carrier and the Firemen thereupon entered into the Mediation Agreement of December 12, 1940, the validity of which is here in issue.

The first clause of the Agreement (M-K-T R. 27) provides that

> when necessary to call a demoted engineer who is back firing to perform service as engineer, the senior available demoted engineer will be called.

The third clause and the accompanying letters (M-K-T R. 31–32) made the first clause applicable to Smithville. The effect of this was to eliminate the preference previously given to engineers of the home terminal and the special arrangement at Smithville in favor of the pool engineers (M-K-T R. 280). The second clause of the agreement provided that working lists should be regulated in the manner contemplated by an exchange of letters in March 1923; these stated that the assignments would be handled by the management, assisted by the local chairmen of the two organizations (M-K-T R. 29–31, 286). The consequence was to change the current practice whereby the list was handled by the Engineers' Committee.[6]

---

[6] The practical effect of this was that the management conferred with both the Firemen and the Engineers rather than with the Engineers alone (M-K-T R. 149).

After the making of this agreement with the Firemen, the carrier gave notice to the Engineers that it was canceling previous agreements inconsistent therewith, and after unavailing conferences, the cancellation became effective (M-K-T R. 128–140, 196). The Engineers then brought this action for a declaratory judgment that the Agreement of December 12, 1940, was null and void because in violation of the Railway Labor Act, and that the Engineers should be declared to have "exclusive rights to negotiate, bargain and agree collectively with the [carrier] as to pay, rules and working conditions of locomotive engineers" (M-K-T R. 33–34).

The district court ruled that the Agreement of December 12, 1940 was lawful and that the carrier had the right to negotiate with both of the Brotherhoods, and with either if the other refused to participate, with respect to such matters as the movement of firemen and engineers back and forth from one craft to the other (M-K-T R. 69, 70–78). The Circuit Court of Appeals for the Fifth Circuit held that on such subjects, where both crafts were interested, neither organization had exclusive rights to make a complete agreement without the concurrence of the other, and that the agreement between the Firemen and the carrier was not void but was incomplete and not binding upon the Engineers, subject to termination by the carrier if the Engineers did not acquiesce in it (M-K-T R. 298–301).

Nos. 27 and 41—The Southern Pacific case.—In this case, the Engineers are attacking the validity of certain provisions of the agreement made in 1939 between the Firemen and the Southern Pacific Railroad on the ground that the Firemen have no right to contract with respect to the conditions of employment of engineers.

1. The Engineers challenge the lawfulness of Article 43, Sections 1, 2, 3, 4, and 6 of the Firemen's Agreement of 1939, which contains the mileage limitations.[7]

Inasmuch as the precise language of the Agreement is important, the sections in question are quoted here in full (S. P. R. 604–606, 608):

ARTICLE 43

DEMOTIONS AND LOST RUNS

SEC. 1. When, from any cause, it becomes necessary to reduce the number of engineers on the engineers' working list on any seniority district, those taken off may, if they so elect, displace any firemen their junior on that seniority district under the following conditions:

First: That no reduction will be made so long as those in assigned or extra passenger

[7] Similar provisions had been incorporated in both the Engineers' and Firemen's Agreements since 1913; and since 1918 the mileage provisions in the two agreements on the Southern Pacific have been substantially the same (Pl. Ex. 7, S. P. R. 637–657). Identical provisions are contained in the Firemen's Agreement of 1929 and the Engineers' Agreement of 1931, which is still in effect (S. P. R. 653–666).

service are earning the equivalent of 4,000 miles per month; in assigned, pooled or chain-gang freight, or other service paying freight rates, are averaging the equivalent of 3,200 miles per month; on the road extra list are averaging the equivalent of 2,600 miles per month, or those on the extra list in switching service are averaging 26 days per month.

Second: That when reductions are made they shall be in reverse order of seniority.

SEC. 2. When hired engineers are laid off on account of reduction in service, they will retain all seniority rights; provided, they return to actual service within 30 days from the date their services are required.

SEC. 3. Engineers taken off under this rule shall be returned to service as engineers in the order of their seniority as engineers, and as soon as it can be shown that engineers in assigned or extra passenger service can earn the equivalent of 4,800 miles per month; in assigned, pooled, chain-gang or other regular service paying freight rates, the equivalent of 3,800 miles per month.

SEC. 4. In the regulation of passenger or other assigned service, sufficient men will be assigned to keep the mileage, or equivalent thereof, within the limitation of 4,000 and 4,800 miles for passenger and 3,200 and 3,800 miles for other regular service, as provided herein. If, in any service, additional assignments would reduce earnings

below these limits, regulation will be affected by requiring the regular assigned man or men to lay off when the equivalent of 4,800 miles in passenger or 3,800 miles in other regular service has been reached.

On road extra lists, sufficient engineers will be maintained to keep the average mileage, or equivalent thereof, between 2,600 and 3,800 miles per month; provided that when engineers are cut off the working list and it is shown that those on the extra lists are averaging the equivalent of 3,100 miles per month, engineers will be returned to the extra lists if the addition will not reduce the average mileage, or the equivalent thereof, below 2,600 miles per month.

Where separate extra lists are maintained for yard service, sufficient engineers will be maintained to keep the average earnings between 26 and 35 days per month; provided that when engineers are cut off the yard working list and it is shown that men are averaging the equivalent of 31 days per month, engineers will be returned to service if the addition will not reduce the average earnings below 26 days per month.

NOTE.—As to mileage regulations affecting part-time men, see addendum to Article 43, pages 118–119–120.[8]

SEC. 5. * * *

SEC. 6. In making reductions and replacing firemen upon the service lists, the same

[8] The Addendum is set forth at S. P. R. 629–632.

mileage shall apply as in the case of engineers. * * *

2. Article 37, Section 15, of the Firemen's 1939 Agreement, provides (S. P. R. 587):

> SEC. 15. A fireman assigned to a regular run and, at the instance of the Company, called for other service, thus causing him to miss his regular run, will be paid for such other service not less than he would have earned had he been sent out in turn in the service to which assigned. This not to include overtime.

The Engineers do not assail this provision but the questions and answers which follow it; these read as follows (*ibid.*):

> Question: (a) If it becomes necessary to call a fireman for service as an emergency engineer, when the engineers' extra list is exhausted, who should be called?
>
> (b) Should a senior demoted engineer holding assignment as fireman become available after man used under (a) returns to terminal or completes day's work, who should be used?
>
> Answer: (a) The senior available qualified man in accordance with his seniority as engineer.
>
> (b) The senior available man.

3. Article 51, Section 1, of the Firemen's Agreement provides that (S. P. R. 616):

> SEC. 1. The right of any *engineer*, fireman, hostler or hostler helper to have the

> regularly constituted committee of his organization represent him in the handling of his grievances, in accordance with the laws of his organization and under the recognized interpretation of the General Committee making the schedule, involved, is conceded. [Italics supplied.] [9]

Decisions below.—The district court rejected all of the Engineers' contentions and entered a declaratory judgment that each of the challenged provisions of the Firemen's Agreement was lawful under the Railway Labor Act and that the Firemen had the right to represent men working as engineers on grievance matters (S. P. R. 58–59).

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[9] An identical provision was included in the Chicago Joint Agreement of 1913 (S. P. R. 671) and in all agreements made with each organization since that time up to but not including the Engineers Agreement of 1931. See Plaintiff's Exhibit 8 (S. P. R. 660–663). The latter agreement provides, in Article 32, Section 22 (S. P. R. 452):

"SEC. 22. The General Committee of Adjustment, Brotherhood of Locomotive Engineers, will represent all locomotive engineers in the making of contracts, rates, rules, working agreement, and interpretations thereof.

"All controversies affecting locomotive engineers will be handled in accordance with the recognized interpretation of the Engineers' contract as agreed upon between the Committee of the Brotherhood of Locomotive Engineers and the Management.

"In matters pertaining to discipline, or other questions not affecting changes in Engineers' contract, the officials of the Company reserve the right to meet any of their employes either individually or collectively."

The Court found (Finding 11, S. P. R. 52) that the provisions of Article 43 here in issue

> were and are intended to set forth conditions upon which an engineer has the privilege of displacing a fireman and of continuing such displacement. None of said provisions was or is intended to or does regulate the craft of engineers apart from the privilege of a member of that craft to displace a fireman, or prevent the craft of engineers from contracting with the defendant as to different maximum or minimum miles or hours.

The Court also found (S. P. R. 53):

> 14. The Questions and Answers under Article 37, Section 15, of the Firemen's Agreement were and are intended and reasonably calculated to protect the craft of firemen in their rights under said section and have a reasonable relation to the firemen's seniority rules.

The Circuit Court of Appeals for the Ninth Circuit affirmed the district court's decision as to the Firemen's right to represent members in the handling of grievances. It directed that Finding 11, quoted above, be incorporated in the judgment as to the validity of Article 43, thereby holding the Article lawful as a condition upon the right of engineers to displace firemen, but not as otherwise regulating the craft of engineers (S. P. R. 818). This determination seemingly accepted the

Firemen's contentions. But the court then went on to state (S. P. R. 823) that this was the interpretation which the Engineers claimed,

> namely, "that Sections 2, 3, 4 and 6 of Article 43 of the Firemen's Agreement shall be limited in their application to conditions under which demoted engineers enter, remain in, and leave the firemen's craft, and that said sections * * * [are] invalid insofar as they seek to prescribe conditions of re-entry into the engineers' craft or to regulate the mileage of engineers or the number of engineers to be assigned to engineers' working lists, * * *

The court reversed the judgment of the district court as to the question and answer appended to Article 37, Section 15. It stated that (S. P. R. 824) "the Act contemplates that the cleavage of the powers of the firemen and engineers' crafts to agree with the employer is at the point of imposing conditions of entry into the one craft or the other." Its conclusion was that these interpretations controlled the promotion of men to engineers and were therefore unlawful "insofar as they relate to entry of a fireman into the craft of engineers" (S. P. R. 826).

The Engineers have petitioned for certiorari from the judgment as to Article 51 and the right of the Firemen to handle grievances, and the Firemen have petitioned from the judgment as to Articles 43 and 37.

SUMMARY OF ARGUMENT

I

Resort to the declaratory judgment procedure in these cases was proper, inasmuch as the dispute is of a type which would warrant injunctive relief. Neither the terms nor the policy of the Railway Labor Act forbid the submission to the courts for a declaratory ruling of questions as to the validity of bargaining agreements under the Act. The jurisdiction of the Adjustment Board does not extend to such questions.

II

Since only declaratory and not injunctive relief is sought, and since in any event a suit by a majority representative to enjoin a carrier from treating with any other organization on behalf of its craft is authorized by the Railway Labor Act (*Virginian Railway Co.* v. *System Federation No. 40,* 300 U. S. 515) the Norris-LaGuardia Act is not applicable. Furthermore, the enforcement of the rights of the majority representative is consistent with the policy of the latter Act as well as with that of the Railway Labor Act.

III

These cases involve the validity of contracts under the Railway Labor Act and not their construction. To the extent that it is necessary to construe the contracts in order to determine their

"(d) In case of a permanent or temporary vacancy on the Adjustment Board, the vacancy shall be filled by selection in the same manner as in the original selection.

"(e) If either the carriers or the labor organizations of the employees fail to select and designate representatives to the Adjustment Board, as provided in paragraphs (b) and (c) of this section, respectively, within sixty days after the passage of this Act, in case of any original appointment to office of a member of the Adjustment Board, or in a case of a vacancy in any such office within thirty days after such vacancy occurs, the Mediation Board shall thereupon directly make the appointment and shall select an individual associated in interest with the carriers or the group of labor organizations of employees, whichever he is to represent.

"(f) In the event a dispute arises as to the right of any national labor organization to participate as per paragraph (c) of this section in the selection and designation of the labor members of the Adjustment Board, the Secretary of Labor shall investigate the claim of such labor organization to participate, and if such claim in the judgment of the Secretary of Labor has merit, the Secretary shall notify the Mediation Board accordingly, and within ten days after receipt of such advice the Mediation Board shall request those national labor organizations duly qualified as per paragraph (c) of this section to participate in the selection and designation of the labor members of the Adjustment Board to select a representative. Such representative, together with a representative likewise designated by the claimant, and a third or neutral party designated by the Mediation Board, constituting a board of three, shall within thirty days after the appointment of the neutral member investigate the claims of the labor organization desiring participation and decide whether or not it was organized in accordance with section 2 hereof and is otherwise properly qualified to participate in the selection of the labor members of the Adjustment Board, and the findings of such boards of three shall be final and binding.

"(g) Each member of the Adjustment Board shall be compensated by the party or parties he is to represent. Each third or neutral party selected under the provisions of (f) of this section shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while serving as such third or neutral party.

"(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

"First division: To have jurisdiction over disputes involving train- and yard-service employees of carriers; that is, engineers, firemen, hostlers; and outside hostler helpers, conductors, trainmen, and yard-service employees. This division shall consist of ten members, five of whom shall be selected and designated by the carriers and five of whom shall be selected and designated by the national labor organizations of the employees.

"Second division: To have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheet-metal workers, electrical workers, car men, the helpers and apprentices of all the foregoing, coach cleaners, power-house employees, and railroad-shop laborers. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of the employees.

"Third division: To have jurisdiction over disputes involving station, tower, and telegraph employees, train dispatchers, maintenance-of-way men, clerical employees, freight handlers, express, station, and store employees, signal men, sleeping-car conductors, sleeping-car porters, and maids and dining-car employees. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of employees.

"Fourth division: To have jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water; and all other employees of carriers over which jurisdiction is not given to the first, second, and third divisions. This division shall consist of six members, three of whom shall be selected by the carriers and three by the national labor organizations of the employees.

"(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

"(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them.

"(k) Any division of the Adjustment Board shall have authority to empower two or more of its members to conduct hearings and make findings upon disputes, when properly submitted, at any place designated by the division: *Provided, however*, That final awards as to any such dispute must be made by the entire division as hereinafter provided.

"(l) Upon failure of any division to agree upon an award because of a deadlock or inability to secure a majority vote of the division members, as provided in paragraph (n) of this section, then such division shall forthwith agree upon and select a neutral person, to be known as 'referee', to sit with the division as a member thereof and make an award. Should the division fail to agree upon and select a referee within ten days of the date of the deadlock or inability to secure a majority vote, then the division, or any member thereof, or the parties or either party to the dispute may certify that

fact to the Mediation Board, which Board shall, within ten days from the date of receiving such certificate, select and name the referee to sit with the division as a member thereof and make an award. The Mediation Board shall be bound by the same provisions in the appointment of these neutral referees as are provided elsewhere in this Act for the appointment of arbitrators and shall fix and pay the compensation of such referees.

"(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute, except in so far as they shall contain a money award. In case a dispute arises involving an interpretation of the award the division of the Board upon request of either party shall interpret the award in the light of the dispute.

"(n) A majority vote of all members of the division of the Adjustment Board shall be competent to make an award with respect to any dispute submitted to it.

"(o) In case of an award by any division of the Adjustment Board in favor of petitioner, the division of the Board shall make an order, directed to the carrier, to make the award effective and, if the award includes a requirement for the payment of money, to pay the employee the sum to which he is entitled under the award on or before a day named.

"(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board.

"(q) All actions at law based upon the provisions of this section shall be begun within two years from the time the cause of action accrues under the award of the division of the Adjustment Board, and not after.

"(r) The several divisions of the Adjustment Board shall maintain headquarters in Chicago, Illinois, meet regularly, and continue

in session so long as there is pending before the division any matter within its jurisdiction which has been submitted for its consideration and which has not been disposed of.

"(s) Whenever practicable, the several divisions or subdivisions of the Adjustment Board shall be supplied with suitable quarters in any Federal building located at its place of meeting.

"(t) The Adjustment Board may, subject to the approval of the Mediation Board, employ and fix the compensations of such assistants as it deems necessary in carrying on its proceedings. The compensation of such employees shall be paid by the Mediation Board.

"(u) The Adjustment Board shall meet within forty days after the approval of this Act and adopt such rules as it deems necessary to control proceedings before the respective divisions and not in conflict with the provisions of this section. Immediately following the meeting of the entire Board and the adoption of such rules, the respective divisions shall meet and organize by the selection of a chairman, a vice chairman, and a secretary. Thereafter each division shall annually designate one of its members to act as chairman and one if its members to act as vice chairman: *Provided, however*, That the chairmanship and vice chairmanship of any division shall alternate as between the groups, so that both the chairmanship and vice chairmanship shall be held alternately by a representative of the carriers and a representative of the employees. In case of a vacancy, such vacancy shall be filled for the unexpired term by the selection of a successor from the same group.

"(v) Each division of the Adjustment Board shall annually prepare and submit a report of its activities to the Mediation Board, and the substance of such report shall be included in the annual report of the Mediation Board to the Congress of the United States. The reports of each division of the Adjustment Board and the annual report of the Mediation Board shall state in detail all cases heard, all actions taken, the names, salaries, and duties of all agencies, employees, and officers receiving compensation from the United States under the authority of this Act, and an account of all moneys appropriated by Congress pursuant to the authority conferred by this Act and disbursed by such agencies, employees, and officers.

"(w) Any division of the Adjustment Board shall have authority, in its discretion, to establish regional adjustment boards to act in its place and stead for such limited period as such division may determine to be necessary. Carrier members of such regional boards shall be designated in keeping with rules devised for this purpose by the carrier members of the Adjustment Board and the labor members shall be designated in keeping with rules devised for this purpose by the labor members of the Adjustment Board. Any such regional board shall, during the time for which it is appointed, have the same authority to conduct hearings, make findings upon disputes, and adopt the same procedure as the division of the Adjustment Board appointing it, and its decisions shall be enforceable to the same extent and under the same processes. A neutral person, as referee, shall be appointed for service in connection with any such regional adjustment board in the same circumstances and manner as

provided in paragraph (1) hereof, with respect to a division of the Adjustment Board.

"Second. Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or classes of its or their employees, all acting through their representatives, selected in accordance with the provisions of this Act, from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board."

Section 4 of the Railway Labor Act is amended to read as follows:

"NATIONAL MEDIATION BOARD

"SEC. 4. First. The Board of Mediation is hereby abolished, effective thirty days from the approval of this Act and the members, secretary, officers, assistants, employees, and agents thereof, in office upon the date of the approval of this Act, shall continue to function and receive their salaries for a period of thirty days from such date in the same manner as though this Act had not been passed. There is hereby established, as an independent agency in the executive branch of the Government, a board to be known as the 'National Mediation Board', to be composed of three members appointed by the President, by and with the advice and consent of the Senate, not more than two of whom shall be of the same political party. The terms of office of the members first appointed shall begin as soon as the members shall qualify, but not before thirty days after the approval of this Act, and expire, as designated by the President at the time of nomination, one on February 1, 1935, one on February 1, 1936, and one on February 1, 1937. The terms of office of all successors shall expire three years after the expiration of the terms for which their predecessors were appointed; but any member appointed to fill a vacancy occurring prior to the expiration of the term of which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor. Vacancies in the Board shall not impair the powers nor affect the duties of the Board nor of the remaining members of the Board. Two of the members in office shall constitute a quorum for the transaction of the business of the Board. Each member of the Board shall receive a salary at the rate of $10,000 per annum, together with necessary traveling and subsistence expenses, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while away from the principal office of the Board on business required by this Act. No person in the employment of or who is pecuniarily or otherwise interested in any organization of employees or any carrier shall enter upon the duties of or continue to be a member of the Board.

"All cases referred to the Board of Mediation and unsettled on the date of the approval of this Act shall be handled to conclusion by the Mediation Board.

"A member of the Board may be removed by the President for inefficiency, neglect of duty, malfeasance in office, or ineligibility, but for no other cause.

"Second. The Mediation Board shall annually designate a member to act as chairman. The Board shall maintain its principal office in the District of Columbia, but it may meet at any other place whenever it deems it necessary so to do. The Board may designate one or more of its members to exercise the functions of the Board in mediation proceedings. Each member of the Board shall have power to administer oaths and affirmations. The Board shall have a seal which shall be judicially noticed. The Board shall make an annual report to Congress.

"Third. The Mediation Board may (1) appoint such experts and assistants to act in a confidential capacity and, subject to the provisions of the civil-service laws, such other officers and employees as are essential to the effective transaction of the work of the Board; (2) in accordance with the Classification Act of 1923, fix the salaries of such experts, assistants, officers, and employees; and (3) make such expenditures (including expenditures for rent and personal services at the seat of government and elsewhere, for law books, periodicals, and books of reference, and for printing and binding, and including expenditures for salaries and compensation, necessary traveling expenses and expenses actually incurred for subsistence, and other necessary expenses of the Mediation Board, Adjustment Board, Regional Adjustment Boards established under paragraph (w) of section 3, and boards of arbitration, in accordance with the provisions of this section and sections 3 and 7, respectively), as may be necessary for the execution of the functions vested in the Board, in the Adjustment Board and in the boards of arbitration, and as may be provided for by the Congress from time to time. All expenditures of the Board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

"Fourth. The Mediation Board is hereby authorized by its order to assign, or refer, any portion of its work, business, or functions arising under this or any other Act of Congress, or referred to it by Congress or either branch thereof, to an individual member of the Board or to an employee or employees of the Board to be designated by such order for action thereon, and by its order at any time to amend, modify, supplement, or rescind any such assignment or reference. All such orders shall take effect forthwith and remain in effect until otherwise ordered by the Board. In conformity with and subject to the order or orders of the Mediation Board in the premises, any such individual member of the Board or employee designated shall have power and authority to act as to any of said work, business, or functions so assigned or referred to him for action by the Board.

"Fifth. All officers and employees of the Board of Mediation (except the members thereof whose offices are hereby abolished) whose services in the judgment of the Mediation Board are necessary to the efficient operation of the Board are hereby transferred to the Board, without change in classification or compensation; except that the Board may provide for the adjustment of such classification or com-

pensation to conform to the duties to which such officers and employees may be assigned.

"All unexpended appropriations for the operation of the Board of Mediation that are available at the time of the abolition of the Board of Mediation shall be transferred to the Mediation Board and shall be available for its use for salaries and other authorized expenditures."

SEC. 5. Section 5 of the Railway Labor Act is amended to read as follows:

"FUNCTIONS OF MEDIATION BOARD

"SEC. 5. First. The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

"(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

"(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

"The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

"In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in section 10 of this Act) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this Act.

"If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under section 10 of this Act, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose.

"Second. In any case in which a controversy arises over the meaning or the application of any agreement reached through mediation under the provisions of this Act, either party to the said agreement, or both, may apply to the Mediation Board for an interpretation of the meaning or application of such agreement. The said Board shall upon receipt of such request notify the parties to the controversy, and after a hearing of both sides give its interpretation within thirty days.

"Third. The Mediation Board shall have the following duties with respect to the arbitration of disputes under section 7 of this Act:

"(a) On failure of the arbitrators named by the parties to agree on the remaining arbitrator or arbitrators within the time set by section 7 of this Act, it shall be the duty of the Mediation Board to name such remaining abritrator or arbitrators. It shall be the duty of the Board in naming such arbitrator or arbitrators to

appoint only those whom the Board shall deem wholly disinterested in the controversy to be arbitrated and impartial and without bias as between the parties to such arbitration. Should, however, the Board name an arbitrator or arbitrators not so disinterested and impartial, then, upon proper investigation and presentation of the facts, the Board shall promptly remove such arbitrator.

"If an arbitrator named by the Mediation Board, in accordance with the provisions of this Act, shall be removed by such Board as provided by this Act, or if such an arbitrator refuses or is unable to serve, it shall be the duty of the Mediation Board, promptly to select another arbitrator in the same manner as provided in this Act for an original appointment by the Mediation Board.

"(b) Any member of the Mediation Board is authorized to take the acknowledgment of an agreement to arbitrate under this Act. When so acknowledged, or when acknowledged by the parties before a notary public or the clerk of a district court or a circuit court of appeals of the United States, such agreement to arbitrate shall be delivered to a member of said Board or transmitted to said Board to be filed in its office.

"(c) When an agreement to arbitrate has been filed with the Mediation Board, or with one of its members, as provided by this section, and when the said Board has been furnished the names of the arbitrators chosen by the parties to the controversy, it shall be the duty of the Board to cause a notice in writing to be served upon said arbitrators, notifying them of their appointment, requesting them to meet promptly to name the remaining arbitrator or arbitrators necessary to complete the Board of Arbitration, and advising them of the period within which, as provided by the agreement to arbitrate, they are empowered to name such arbitrator or arbitrators.

"(d) Either party to an arbitration desiring the reconvening of a board of arbitration to pass upon any controversy arising over the meaning or application of an award may so notify the Mediation Board in writing, stating in such notice the question or questions to be submitted to such reconvened Board. The Mediation Board shall thereupon promptly communicate with the members of the Board of Arbitration, or a subcommittee of such Board appointed for such purpose pursuant to a provision in the agreement to arbitrate, and arrange for the reconvening of said Board of Arbitration or subcommittee, and shall notify the respective parties to the controversy of the time and place at which the Board, or the subcommittee, will meet for hearings upon the matters in controversy to be submitted to it. No evidence other than that contained in the record filed with the original award shall be received or considered by such reconvened Board or subcommittee, except such evidence as may be necessary to illustrate the interpretations suggested by the parties. If any member of the original Board is unable or unwilling to serve on such reconvened Board or subcommittee thereof, another arbitrator shall be named in the same manner and with the same powers and duties as such original arbitrator.

"(e) Within sixty days after the approval of this Act every carrier shall file with the Mediation Board a copy of each contract with its employees in effect on the 1st day of April 1934, covering rates of pay, rules, and working conditions. If no contract with any craft

or class of its employees has been entered into, the carrier shall file with the Mediation Board a statement of that fact including also a statement of the rates of pay, rules and working conditions applicable in dealing with such craft or class. When any new contract is executed or change is made in an existing contract with any class or craft of its employees covering rates of pay, rules, or working conditions, or in those rates of pay, rules, and working conditions of employees not covered by contract, the carrier shall file the same with the Mediation Board within thirty days after such new contract or change in existing contract has been executed or rates of pay, rules, and working conditions have been made effective.

"(f) The Mediation Board shall be the custodian of all papers and documents heretofore filed with or transferred to the Board of Mediation bearing upon the settlement, adjustment, or determination of disputes between carriers and their employees or upon mediation or arbitration proceedings held under or pursuant to the provisions of any Act of Congress in respect thereto; and the President is authorized to designate a custodian of the records and property of the Board of Mediation until the transfer and delivery of such records to the Mediation Board and to require the transfer and delivery to the Mediation Board of any and all such papers and documents filed with it or in its possession."

SEC. 6. Section 6 of the Railway Labor Act is amended to read as follows:

"SEC. 6. Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board."

ARBITRATION

SEC. 7. First. Whenever a controversy shall arise between a carrier or carriers and its or their employees which is not settled either in conference between representatives of the parties or by the appropriate adjustment board or through mediation, in the manner provided in the preceding sections, such controversy may, by agreement of the parties to such controversy, be submitted to the arbitration of a board of three (or, if the parties to the controversy so stipulate, of six) persons: *Provided, however*, That the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this Act or otherwise.

Second. Such board of arbitration shall be chosen in the following manner:

(a) In the case of a board of three, the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name one arbitrator; the two arbitrators thus chosen shall select a third arbitrator. If the arbitrators chosen by the parties shall fail to name the third arbitrator within five days after their first meeting, such third arbitrator shall be named by the Mediation Board.

(b) In the case of a board of six, the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name two arbitrators; the four arbitrators thus chosen shall, by a majority vote, select the remaining two arbitrators. If the arbitrators chosen by the parties shall fail to name the two arbitrators within fifteen days after their first meeting, the said two arbitrators, or as many of them as have not been named, shall be named by the Mediation Board.

Third. (a) When the arbitrators selected by the respective parties have agreed upon the remaining arbitrator or arbitrators, they shall notify the Mediation Board, and, in the event of their failure to agree upon any or upon all of the necessary arbitrators within the period fixed by this Act, they shall, at the expiration of such period, notify the Mediation Board of the arbitrators selected, if any, or of their failure to make or to complete such selection.

(b) The board of arbitration shall organize and select its own chairman and make all necessary rules for conducting its hearings: *Provided, however*, That the board of arbitration shall be bound to give the parties to the controversy a full and fair hearing, which shall include an opportunity to present evidence in support of their claims, and an opportunity to present their case in person, by counsel, or by other representative as they may respectively elect.

(c) Upon notice from the Mediation Board that the parties, or either party, to an arbitration desire the reconvening of the board of arbitration (or a subcommittee of such board of arbitration appointed for such purpose pursuant to the agreement to arbitrate) to pass upon any controversy over the meaning or application of their award, the board, or its subcommittee, shall at once reconvene. No question other than, or in addition to, the questions relating to the meaning or application of the award, submitted by the party or parties in writing, shall be considered by the reconvened board of arbitration or its subcommittee.

Such rulings shall be acknowledged by such board or subcommittee thereof in the same manner, and filed in the same district court clerk's office, as the original award and become a part thereof.

(d) No arbitrator, except those chosen by the Mediation Board, shall be incompetent to act as an arbitrator because of his interest in the controversy to be arbitrated, or because of his connection with or partiality to either of the parties to the arbitration.

(e) Each member of any board of arbitration created under the provisions of this Act named by either party to the arbitration shall be compensated by the party naming him. Each arbitrator selected by the arbitrators or named by the Mediation Board shall receive from the Mediation Board such compensation as the Mediation Board

may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, while serving as an arbitrator.

(f) The board of arbitration shall furnish a certified copy of its award to the respective parties to the controversy, and shall transmit the original, together with the papers and proceedings and a transcript of the evidence taken at the hearings, certified under the hands of at least a majority of the arbitrators, to the clerk of the district court of the United States for the district wherein the controversy arose or the arbitration is entered into, to be filed in said clerk's office as hereinafter provided. The said board shall also furnish a certified copy of its award, and the papers and proceedings, including testimony relating thereto, to the Mediation Board, to be filed in its office; and in addition a certified copy of its award shall be filed in the office of the Interstate Commerce Commission: *Provided, however*, That such award shall not be construed to diminish or extinguish any of the powers or duties of the Interstate Commerce Commission, under the Interstate Commerce Act, as amended.

(g) A board of arbitration may, subject to the approval of the Mediation Board, employ and fix the compensation of such assistants as it deems necessary in carrying on the arbitration proceedings. The compensation of such employees, together with their necessary traveling expenses and expenses actually incurred for subsistence, while so employed, and the necessary expenses of boards of arbitration, shall be paid by the Mediation Board.

Whenever practicable, the board shall be supplied with suitable quarters in any Federal building located at its place of meeting or at any place where the board may conduct its proceedings or deliberations.

(h) All testimony before said board shall be given under oath or affirmation, and any member of the board shall have the power to administer oaths or affirmations. The board of arbitration, or any member thereof, shall have the power to require the attendance of witnesses and the production of such books, papers, contracts, agreements, and documents as may be deemed by the board of arbitration material to a just determination of the matters submitted to its arbitration, and may for that purpose request the clerk of the district court of the United States for the district wherein said arbitration is being conducted to issue the necessary subpœnas, and upon such request the said clerk or his duly authorized deputy shall be, and he hereby is, authorized, and it shall be his duty, to issue such subpœnas. In the event of the failure of any person to comply with such subpœna, or in the event of the contumacy of any witness appearing before the board of arbitration, the board may invoke the aid of the United States courts to compel witnesses to attend and testify and to produce such books, papers, contracts, agreements, and documents to the same extent and under the same conditions and penalties as provided for in the Act to regulate commerce approved February 4, 1887, and the amendments thereto.

Any witness appearing before a board of arbitration shall receive the same fees and mileage as witnesses in courts of the United States, to be paid by the party securing the subpœna.

SEC. 8.[2] The agreement to arbitrate—

(a) Shall be in writing;

(b) Shall stipulate that the arbitration is had under the provisions of this Act;

(c) Shall state whether the board of arbitration is to consist of three or of six members;

(d) Shall be signed by the duly accredited representatives of the carrier or carriers and the employees, parties respectively to the agreement to arbitrate, and shall be acknowledged by said parties before a notary public, the clerk of a district court or circuit court of appeals of the United States, or before a member of the Mediation Board, and, when so acknowledged, shall be filed in the office of the Mediation Board;

(e) Shall state specifically the questions to be submitted to the said board for decision; and that, in its award or awards, the said board shall confine itself strictly to decisions as to the questions so specifically submitted to it;

(f) Shall provide that the questions, or any one or more of them, submitted by the parties to the board of arbitration may be withdrawn from arbitration on notice to that effect signed by the duly accredited representatives of all the parties and served on the board of arbitration;

(g) Shall stipulate that the signatures of a majority of said board of arbitration affixed to their award shall be competent to constitute a valid and binding award;

(h) Shall fix a period from the date of the appointment of the arbitrator or arbitrators necessary to complete the board (as provided for in the agreement) within which the said board shall commence its hearings;

(i) Shall fix a period from the beginning of the hearings within which the said board shall make and file its award: *Provided*, That the parties may agree at any time upon an extension of this period;

(j) Shall provide for the date from which the award shall become effective and shall fix the period during which the award shall continue in force;

(k) Shall provide that the award of the board of arbitration and the evidence of the proceedings before the board relating thereto, when certified under the hands of at least a majority of the arbitrators, shall be filed in the clerk's office of the district court of the United States for the district wherein the controversy arose or the arbitration was entered into, which district shall be designated in the agreement; and, when so filed, such award and proceedings shall constitute the full and complete record of the arbitration;

(l) Shall provide that the award, when so filed, shall be final and conclusive upon the parties as to the facts determined by said award and as to the merits of the controversy decided;

(m) Shall provide that any difference arising as to the meaning, or the application of the provisions, of an award made by a board of arbitration shall be referred back for a ruling to the same board, or, by agreement, to a subcommittee of such board; and that such ruling, when acknowledged in the same manner, and filed in the same

[2] Section 8 as contained in Railway Labor Act, approved May 20, 1926.

district court clerk's office, as the original award, shall be a part of and shall have the same force and effect as such original award; and

(n) Shall provide that the respective parties to the award will each faithfully execute the same.

The said agreement to arbitrate, when properly signed and acknowledged as herein provided, shall not be revoked by a party to such agreement: *Provided, however*, That such agreement to arbitrate may at any time be revoked and canceled by the written agreement of both parties, signed by their duly accredited representatives, and (if no board of arbitration has yet been constituted under the agreement) delivered to the Mediation Board or any member thereof; or, if the board of arbitration has been constituted as provided by this Act, delivered to such board of arbitration.

SEC. 8.[3] If any section, subsection, sentence, clause, or phrase of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. All Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed.

SEC. 9. First. The award of a board of arbitration, having been acknowledged as herein provided, shall be filed in the clerk's office of the district court designated in the agreement to arbitrate.

Second. An award acknowledged and filed as herein provided shall be conclusive on the parties as to the merits and facts of the controversy submitted to arbitration, and unless, within ten days after the filing of the award, a petition to impeach the award, on the grounds hereinafter set forth, shall be filed in the clerk's office of the court in which the award has been filed, the court shall enter judgment on the award, which judgment shall be final and conclusive on the parties.

Third. Such petition for the impeachment or contesting of any award so filed shall be entertained by the court only on one or more of the following grounds:

(a) That the award plainly does not conform to the substantive requirements laid down by this Act for such awards, or that the proceedings were not substantially in conformity with this Act;

(b) That the award does not conform, nor confine itself, to the stipulations of the agreement to arbitrate; or

(c) That a member of the board of arbitration rendering the award was guilty of fraud or corruption; or that a party to the arbitration practiced fraud or corruption which fraud or corruption affected the result of the arbitration: *Provided, however*, That no court shall entertain any such petition on the ground that an award is invalid for uncertainty; in such case the proper remedy shall be a submission of such award to a reconvened board, or subcommittee thereof, for interpretation, as provided by this Act: *Provided further*, That an award contested as herein provided shall be construed liberally by the court, with a view to favoring its validity, and that no award shall be set aside for trivial irregularity or clerical error, going only to form and not to substance.

Fourth. If the court shall determine that a part of the award is invalid on some ground or grounds designated in this section as a

[3] Section 8 as contained in Public, No. 442, amendment to Railway Labor Act, approved June 21, 1934.

ground of invalidity, but shall determine that a part of the award is valid, the court shall set aside the entire award: *Provided, however*, That, if the parties shall agree thereto, and if such valid and invalid parts are separable, the court shall set aside the invalid part, and order judgment to stand as to the valid part.

Fifth. At the expiration of ten days from the decision of the district court upon the petition filed as aforesaid, final judgment shall be entered in accordance with said decision, unless during said ten days either party shall appeal therefrom to the circuit court of appeals. In such case only such portion of the record shall be transmitted to the appellate court as is necessary to the proper understanding and consideration of the questions of law presented by said petition and to be decided.

Sixth. The determination of said circuit court of appeals upon said questions shall be final, and, being certified by the clerk thereof to said district court, judgment pursuant thereto shall thereupon be entered by said district court.

Seventh. If the petitioner's contentions are finally sustained, judgment shall be entered setting aside the award in whole or, if the parties so agree, in part; but in such case the parties may agree upon a judgment to be entered disposing of the subject matter of the controversy, which judgment when entered shall have the same force and effect as judgment entered upon an award.

Eighth. Nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor or service by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.

EMERGENCY BOARD

SEC. 10. If a dispute between a carrier and its employees be not adjusted under the foregoing provisions of this Act and should, in the judgment of the Mediation Board, threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation Board shall notify the President, who may thereupon, in his discretion, create a board to investigate and report respecting such dispute. Such board shall be composed of such number of persons as to the President may seem desirable: *Provided, however*, That no member appointed shall be pecuniarily or otherwise interested in any organization of employees or any carrier. The compensation of the members of any such board shall be fixed by the President. Such board shall be created separately in each instance and it shall investigate promptly the facts as to the dispute and make a report thereon to the President within thirty days from the date of its creation.

There is hereby authorized to be appropriated such sums as may be necessary for the expenses of such board, including the compensation and the necessary traveling expenses and expenses actually incurred for subsistence, of the members of the board. All expenditures of the board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

After the creation of such board and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose.

GENERAL PROVISIONS

SEC. 11. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

SEC. 12. There is hereby authorized to be appropriated such sums as may be necessary for expenditure by the Mediation Board in carrying out the provisions of this Act.

SEC. 13. (a) Paragraph "Second" of subdivision (b) of section 128 of the Judicial Code, as amended, is amended to read as follows:

"Second. To review decisions of the district courts, under section 9 of the Railway Labor Act."

(b) Section 2 of the Act entitled "An Act to amend the Judicial Code, and to further define the jurisdiction of the circuit court of appeals and of the Supreme Court, and for other purposes", approved February 13, 1925, is amended to read as follows:

"SEC. 2. That cases in a circuit court of appeals under section 9 of the Railway Labor Act; under section 5 of 'An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes', approved September 26, 1914; and under section 11 of 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914, are included among the cases to which sections 239 and 240 of the Judicial Code shall apply."

SEC. 14. Title III of the Transportation Act, 1920, and the Act approved July 15, 1913, providing for mediation, conciliation, and arbitration, and all acts and parts of Acts in conflict with the provisions of this Act are hereby repealed, except that the members, secretary, officers, employees, and agents of the Railroad Labor Board, in office upon the date of the passage of this Act, shall receive their salaries for a period of 30 days from such date, in the same manner as though this Act had not been passed.

TITLE II

SECTION 201. All of the provisions of title I of this Act, except the provisions of section 3 thereof, are extended to and shall cover every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner of rendition of his service.

SEC. 202. The duties, requirements, penalties, benefits, and privileges prescribed and established by the provisions of title I of this Act, except section 3 thereof, shall apply to said carriers by air and their employees in the same manner and to the same extent as though such carriers and their employees were specifically included within the definition of "carrier" and "employee", respectively, in section 1 thereof.

SEC. 203. The parties or either party to a dispute between an employee or a group of employees and a carrier or carriers by air may invoke the services of the National Mediation Board and the jurisdiction of said Mediation Board is extended to any of the following cases:

(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to an adjustment board as hereinafter provided, and not adjusted in conference between the parties, or where conferences are refused.

The National Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

The services of the Mediation Board may be invoked in a case under this title in the same manner and to the same extent as are the disputes covered by section 5 of title I of this Act.

SEC. 204. The disputes between an employee or group of employees and a carrier or carriers by air growing out of grievances, or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act before the National Labor Relations Board, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to an appropriate adjustment board, as hereinafter provided, with a full statement of the facts and supporting data bearing upon the disputes.

It shall be the duty of every carrier and of its employees, acting through their representatives, selected in accordance with the provisions of this title, to establish a board of adjustment of jurisdiction not exceeding the jurisdiction which may be lawfully exercised by system, group, or regional boards of adjustment, under the authority of section 3, Title I, of this Act.

Such boards of adjustment may be established by agreement between employees and carriers either on any individual carrier, or system, or group or carriers by air and any class or classes of its

or their employees; or pending the establishment of a permanent National Board of Adjustment as hereinafter provided. Nothing in this Act shall prevent said carriers by air, or any class or classes of their employees, both acting through their representatives selected in accordance with provisions of this title, from mutually agreeing to the establishment of a National Board of Adjustment of temporary duration and of similarly limited jurisdiction.

SEC. 205. When, in the judgment of the National Mediation Board, it shall be necessary to have a permanent national board of adjustment in order to provide for the prompt and orderly settlement of disputes between said carriers by air, or any of them, and its or their employees, growing out of grievances or out of the interpretation or application of agreements between said carriers by air or any of them, and any class or classes of its or their employees, covering rates of pay, rules, or working conditions, the National Mediation Board is hereby empowered and directed, by its order duly made, published, and served, to direct the said carriers by air and such labor organizations of their employees, national in scope, as have been or may be recognized in accordance with the provisions of this Act, to select and designate four representatives who shall constitute a board which shall be known as the National Air Transport Adjustment Board. Two members of said National Air Transport Adjustment Board shall be selected by said carriers by air and two members by the said labor organizations of the employees, within thirty days after the date of the order of the National Mediation Board, in the manner and by the procedure prescribed by title I of this Act for the selection and designation of members of the National Railroad Adjustment Board. The National Air Transport Adjustment Board shall meet within forty days after the date of the order of the National Mediation Board directing the selection and designation of its members and shall organize and adopt rules for conducting its proceedings, in the manner prescribed in section 3 of title I of this Act. Vacancies in membership or office shall be filled, members shall be appointed in case of failure of the carriers or of labor organizations of the employees to select and designate representatives, members of the National Air Transport Adjustment Board shall be compensated, hearings shall be held, findings and awards made, stated, served, and enforced, and the number and compensation of any necessary assistants shall be determined and the compensation of such employees shall be paid, all in the same manner and to the same extent as provided with reference to the National Railroad Adjustment Board by section 3 of title I of this Act. The powers and duties prescribed and established by the provisions of section 3 of title I of this Act with reference to the National Railroad Adjustment Board and the several divisions thereof are hereby conferred upon and shall be exercised and performed in like manner and to the same extent by the said National Air Transport Adjustment Board, not exceeding, however, the jurisdiction conferred upon said National Air Transport Adjustment Board by the provisions of this title. From and after the organization of the National Air Transport Adjustment Board, if any system, group, or regional board of adjustment established by any carrier or carriers by air and any class or classes of its or their employees is not satisfactory

to either party thereto, the said party, upon ninety days' notice to the other party, may elect to come under the jurisdiction of the National Air Transport Adjustment Board.

SEC. 206. All cases referred to the National Labor Relations Board, or over which the National Labor Relations Board shall have taken jurisdiction, involving any dispute arising from any cause between any common carrier by air engaged in interstate or foreign commerce or any carrier by air transporting mail for or under contract with the United States Government, and employees of such carrier or carriers, and unsettled on the date of approval of this Act, shall be handled to conclusion by the Mediation Board. The books, records, and papers of the National Labor Relations Board and of the National Labor Board pertinent to such case or cases, whether settled or unsettled, shall be transferred to the custody of the National Mediation Board.

SEC. 207. If any provision of this title or application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

SEC. 208. There is hereby authorized to be appropriated such sums as may be necessary for expenditure by the Mediation Board in carrying out the provisions of this Act.

Approved, April 10, 1936.

U. S. GOVERNMENT PRINTING OFFICE: 1936

SUPREME COURT OF THE UNITED STATES.

No. 23.—October Term, 1943.

General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad, an Unincorporated Association, Petitioner,
vs.
Missouri-Kansas-Texas Railroad Company, et al.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[November 22, 1943.]

Mr. Justice Douglas delivered the opinion of the Court.

This case involves a dispute under the Railway Labor Act concerning the authority of two railroad Brotherhoods to represent certain employees in collective bargaining with the defendant-carriers. The petitioner (hereinafter called the Engineers) is a committee of the Brotherhood of Locomotive Engineers which has been and is the duly designated bargaining representative for the craft of engineers employed by the carriers. The third-party defendant (hereinafter called the Firemen) is a committee of the Brotherhood of Locomotive Firemen and Enginemen, which has been and is the duly designated bargaining representative for the craft of firemen on the same lines. Each craft has long had an agreement with the carriers concerning rules, rates of pay, and working conditions. The agreement with the Engineers states that the right to make and interpret contracts, rules, rates and working agreements for locomotive engineers is vested in that committee. The agreement with the Firemen contains a similar provision concerning members of that craft. Both agreements also contain rules governing the demotion of engineers to be firemen, the promotion of firemen to be engineers, and return of demoted engineers to their former work.[1] For many years the

[1] Generally speaking employees hired under collective bargaining agreements as firemen immediately begin to acquire seniority as such. After a certain period firemen are required to take an engineer's examination. Vacant positions as engineers are filled from the list of those who have passed the qualifying tests. When it is necessary to reduce the force of working engi-

two Brotherhoods had an agreement which established rules and regulations on these subjects and which provided machinery for resolving disputes which might arise between them. This agreement was cancelled in 1927. The present dispute arose since that time and relates to the calling of engineers for emergency service. In general the Engineers and the carriers had a working arrangement providing (1) that, excepting Smithville, Texas, the senior available demoted engineer whose home terminal was at the place where the service was required or the man assigned to the particular run as fireman, if he had greater seniority as engineer, would be chosen when it was necessary to call an engineer for emergency service; (2) that the regulation of the engineers' working lists was to be handled by the Engineers' local chairman, not by the management; and (3) that at Smithville, emergency work would be performed by advancing the assignment of engineers in the so-called "pool",[2] instead of calling in emergency engineers. These arrangements were not satisfactory to the Firemen. After protest to the carriers and after a failure of the Brotherhoods to resolve their dispute the matter was submitted to the National Mediation Board for mediation. The Engineers did not participate. The Firemen and the carriers entered into the Mediation Agreement of December 12, 1940, the validity of which is here challenged. The effect of that agreement was in general to eliminate the preference previously given to engineers of the home terminal and the special arrangement at Smithville in favor of the pool engineers. It also changed the practice respecting the handling of the engineers' working lists—thereafter the assignments would be handled by the management assisted by the local chairmen of the two groups. After making the agreement the carriers gave notice

neers those with the lowest seniority are dropped and they resume their positions as firemen in accordance with their seniority in that craft. As a result, firemen with a lower seniority are moved down the ladder of jobs. Thus the most junior firemen are deprived of work and furloughed until their services are needed. When a vacancy occurs in the engineers' ranks or when the work of engineers increases, all move up the ladder of jobs again.

[2] Engineers are generally assigned in order of seniority to regular runs (both passenger and freight), then to pool freight service (which rotates irregular runs among the pool members on a first in first out basis), and then to extra boards of engineers from which assignments are made as positions are available. If no engineer in those categories is available, the senior available qualified engineer working as a fireman is called as an "emergency" engineer.

to the Engineers that they were cancelling previous arrangements with that Brotherhood.

The Engineers then brought this action for a declaratory judgment (48 Stat. 955, 28 U. S. C. § 400) that the agreement of December 12, 1940, was in violation of the Railway Labor Act (44 Stat. 577, 48 Stat. 1185, 45 U. S. C. § 151) and that the Engineers should be declared to be the sole representative of the locomotive engineers with the exclusive right to bargain for them. The carriers in their answer prayed that the court declare the respective rights of the parties. And the Firemen, though challenging the jurisdiction of the court, in the alternative asked that the agreement of December 12, 1940, be declared valid. The District Court dismissed the petition, holding that the carriers had a right to contract with either of the crafts with reference to the problems in question. The Circuit Court of Appeals held that both crafts were interested in the subject matter of the dispute, that neither craft had an exclusive right to bargain concerning the matters in issue, that the representatives of both crafts should confer and if possible agree, and that the agreement of December 12, 1940, might be terminated by the carriers if not acquiesced in by the Engineers. 132 F. 2d 91.

The case is here on a petition for certiorari which we granted because of the importance of the problems raised by the assumption of jurisdiction over such controversies by the federal courts.

The bulk of the argument here relates to the merits of the dispute. But we do not intimate an opinion concerning them. For we are of the view that the District Court was without power to resolve the controversy.

It is our view that the issues tendered by the present litigation are not justiciable—that is to say that Congress by this Act has foreclosed resort to the courts for enforcement of the claims asserted by the parties.

The history of this legislation has been traced in earlier cases coming before this Court. See *Pennsylvania R. Co.* v. *United States Railroad Labor Board*, 261 U. S. 72; *Pennsylvania Railroad System & Allied Lines Federation No. 90* v. *Pennsylvania R. Co.*, 267 U. S. 203; *Texas & N. O. R. Co.* v. *Brotherhood of Ry. & Steamship Clerks*, 281 U. S. 548; *Virginian Ry. Co.* v. *System Federation No. 40*, 300 U. S. 515. The present Act is the product

of some fifty years of evolution.[3] For many years the only sanctions under the various Congressional enactments in this field were publicity and public opinion. A conspicuous example concerns the Railroad Labor Board, constituted under the Transportation Act of 1920. It had important functions to perform. But this Court held in the *Federation No. 90* case (267 U. S. 203) that the Board's decisions were not supported by any legal sanctions. The parties to the labor controversies covered by the Act were not "in any way to be forced into compliance with the statute or with the judgments pronounced by the Labor Board, except through the effect of adverse public opinion.". *Id.*, p. 216. The 1926 Act (44 Stat. 577) made a basic change in the pattern of the railway labor legislation which had preceded.[4] Conciliatory means were adhered to; provisions for mediation and arbitration were adopted; and the use of that machinery on a voluntary basis was encouraged.[5] But Con-

[3] The first of seven statutes enacted during this period was the Arbitration Act of 1888, 25 Stat. 501. This act provided for the voluntary arbitration of disputes and authorized the President to set up investigating committees. It was superseded in 1898 by the Erdman Act (30 Stat. 424) which provided machinery for arbitration and also introduced for the first time the policy of mediation. The mediators were the chairman of the Interstate Commerce Commission and the United States Commissioner of Labor. Next came the Newlands Act of 1913 (38 Stat. 103) which established a permanent Board of Mediation and Conciliation. Under both the Erdman and Newlands acts, mediation was to be employed first, and upon failure of that the mediators were to attempt to have the parties arbitrate. In 1916 Congress passed the Adamson Act (39 Stat. 721) in settlement of a dispute over the eight-hour day. That act provided for an eight-hour day for train operators and a commission to enforce it. Upon return of the railroads to private ownership, the Esch-Cummins law was passed. See Title III of the Transportation Act of 1920, 41 Stat. 456. This act differed from the earlier legislation by providing for public representation on a newly created Railroad Labor Board, by permitting the Board to investigate all disputes of its own initiative, and by placing the primary burden of settlement of disputes on direct negotiations between the parties. In 1926 Congress passed the first Railway Labor Act (44 Stat. 577) which was amended in 1934, 48 Stat. 1185. See Alderman, The History of Federal Legislation Dealing with Machinery for Settling Disputes Concerning Wages and Working Conditions of Employees of Interstate Railroads (1938); The Railway Labor Act and the National Mediation Board (1940), pp. 7-8, 67-76; Fisher, Industrial Disputes (1940), pp. 154-86; Johnson, Government Regulation of Transportation (1938), pp. 190-206; Parmelee, The Modern Railway (1940), pp. 420-35; Spencer, The National Railroad Adjustment Board (1938) pp. 1-16; Witte, The Government in Labor Disputes (1932), pp. 238-44; Wolf, The Railroad Labor Board (1927), pp. 1-13; Garrison, The National Railroad Adjustment Board: A Unique Administrative Agency, 46 Yale L. J. 567.

[4] The Railway Labor Act and the National Mediation Board (1940) pp. 1-8.

[5] S. Rep. No. 222, 69th Cong., 1st Sess., p. 4.

gress also supported its policy with the imposition of some rules of conduct for breach of which the courts afford a sanction. Thus Congress stated in § 2, Fourth of the 1926 Act that the choice by employees of their collective bargaining representatives should be free from the carriers' coercion and influence. That "definite statutory prohibition of conduct which would thwart the declared purpose" of the Act was held by this Court in the *Clerks* case to be enforcible in an appropriate suit. 281 U. S. 548, 568. As stated by Chief Justice Hughes in that case:

"Freedom of choice in the selection of representatives on each side of the dispute is the essential foundation of the statutory scheme. All the proceedings looking to amicable adjustments and to agreements for arbitration of disputes, the entire policy of the Act, must depend for success on the uncoerced action of each party through its own representatives to the end that agreements satisfactory to both may be reached and the peace essential to the uninterrupted service of the instrumentalities of interstate commerce may be maintained. There is no impairment of the voluntary character of arrangements for the adjustment of disputes in the imposition of a legal obligation not to interfere with the free choice of those who are to make such adjustments. On the contrary, it is of the essence of a voluntary scheme, if it is to accomplish its purpose, that this liberty should be safeguarded. The definite prohibition which Congress inserted in the Act can not therefore be overridden in the view that Congress intended it to be ignored. As the prohibition was appropriate to the aim of Congress, and is capable of enforcement, the conclusion must be that enforcement was contemplated." 281 U. S. p. 569.

Thus what had long been a "right" of employees enforcible only by strikes and other methods of industrial warfare emerged as a "right" enforcible by judicial decree. The right of collective bargaining was no longer dependent on economic power alone.

Further protection was accorded that right by the amendments which were added in 1934. Thus § 2, Ninth provided machinery strengthening the representation provisions of the Act. H. Rep. No. 1944, 73d Cong., 2d Sess., p. 2. That new provision gave the National Mediation Board an adjudicatory function in the settlement of representation disputes. It provided for a reference to that Board of representation disputes arising among a carrier's employees. It charged the Board with

the "duty" upon the request of either party to the dispute to investigate the controversy and to certify the name or names of the designated and authorized representatives of the employees. And Congress added the command that "Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act." It was that specific command for disobedience of which this Court held in the *Virginian Ry. Co.* case (300 U. S. 515) that courts would provide a remedy. That result was reached over the objection that § 2, Ninth stated a policy but created no rights or duties enforcible by judicial decree. This Court reviewed the history of § 2, Ninth—its purpose and meaning. It concluded that the provision in question was "mandatory in form and capable of enforcement by judicial process." *Id.*, p. 545. It observed that if the provision were construed as being precatory only, its addition to the Act was "purposeless"; that only a requirement of "some affirmative act on the part of the employer" would add to the 1926 Act. *Id.*, p. 547. The Court accordingly concluded that the command of § 2, Ninth could not have been intended to be without legal sanction.

Other similar statutory commands or prohibitions were provided by Congress. The right of the majority of a craft or class to determine who shall be the craft or class representative (§ 2, Fourth); the right of the employees to designate as their representative one who is not an employee of the carrier (§ 2, Third); the prohibition against "yellow dog" contracts (§ 2, Fifth) are illustrative.[6] Moreover, administrative machinery was provided for the adjudication of certain controversies. Congress established the National Railroad Adjustment Board for the settlement of specific types of disputes or grievances between employees and the carrier. § 3. And Congress gave the courts jurisdiction to entertain suits based on the awards of the Adjustment Board. § 3, First (p). That feature of the Act, as well as § 2, Ninth which placed on the Mediation Board definite adjudicatory functions, transferred certain segments of railway labor problems from the realm of conciliation and mediation to tribunals of the law. The new administrative machinery plus the statutory commands and prohibitions marked a great advance in supplementing nego-

[6] Criminal penalties were added by § 2, Tenth for the wilful violation of certain provisions of the Act including the three just mentioned.

tiation and self-help with specific legal sanctions in enforcement of the Congressional policy.

But it is apparent on the face of the Act that while Congress dealt with this subject comprehensively; it left the solution of only some of those problems to the courts or to administrative agencies. It entrusted large segments of this field to the voluntary processes of conciliation, mediation, and arbitration. Thus by § 5, First, Congress provided that either party to a dispute might invoke the services of the Mediation Board in a "dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference" and any other "dispute not referable" to the Adjustment Board and "not adjusted in conference between the parties or where conferences are refused."[7] Beyond the mediation machinery furnished by the Board lies arbitration. § 5, First and Third, § 7. In case both fail there is the Emergency Board which may be established by the President under § 10. In short, Congress by this legislation has freely employed the traditional instruments of mediation, conciliation and arbitration. Those instruments, in addition to the available economic weapons, remain unchanged in large areas of this railway labor field. On only certain phases of this controversial subject has Congress utilized administrative or judicial machinery and invoked the compulsions of the law. Congress was dealing with a subject highly charged with emotion. Its approach has not only been slow; it has been piecemeal. Congress has been highly selective in its use of legal machinery. The delicacy of these problems has made it hesitant to go too fast or too far. The inference is strong that Congress intended to go no further in its use of the processes of adjudication and litigation than the express provisions of the Act indicate.

That history has a special claim here. It must be kept in mind in analyzing a bill of complaint which, like the present one, seeks to state a cause of action under the Railway Labor Act and asks that judicial power be exerted in enforcement of an obligation which it is claimed Congress has created.

The Engineers assert that the carriers had no right under the Act to negotiate with the Firemen on the subject of emer-

[7] The Mediation Board also has power of interpretation of mediation agreements. § 5, Second. It likewise has duties with respect to the arbitration of disputes. See § 5, Third. Mediation is the Board's "most important task". Eighth Annual Report, National Mediation Board (1942) p. 4.

gency engineers and that the Mediation Agreement of December 12, 1940, is therefore void. They rely on § 2, Fourth of the Act and on § 2, First and Ninth.[8] Sec. 2, Fourth states that "Employees shall have the right to organize and bargain collectively through representatives of their own choosing." But that great right, which Congress in 1926 at last supported with legal sanctions, is not challenged here. The Engineers and the Firemen are the collective bargaining agents for their respective crafts and are acknowledged as such. Their authority so to act is not challenged. Nor is it apparent how the majority rule provision of § 2, Fourth is involved here. It states that "The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act." But concededly the Engineers represent a majority of the craft of engineers and the Firemen a majority of the firemen's craft. The principle of majority representation is not challenged. Nor does § 2, Second make justiciable what otherwise is not. It provides that "All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute." As we have already pointed out, § 2, Ninth, after providing for a certification by the Mediation Board of the particular craft or class representative, states that "the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act." That command of § 2, Ninth was enforced in the *Virginian Ry. Co.* case. But § 2, Second, like § 2, First,[9]

[8] Respondents in support of their prayers for declaratory relief rely not only on the implications from these and other sections of the Act but also on the proviso clause of § 1, Fifth to the effect "That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission."

[9] Sec. 2, First provides: "It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof."

merely states the policy which those other provisions buttress with more particularized commands.

It is true that the present controversy grows out of an application of the principles of collective bargaining and majority rule. It involves a jurisdictional dispute—an asserted overlapping of the interests of two crafts. It necessitates a determination of the point where the authority of one craft ends and the other begins or of the zones where they have joint authority. In the *Clerks'* case and in the *Virginian Ry. Co.* case the Court was asked to enforce statutory commands which were explicit and unequivocal. But the situation here is different. Congress did not attempt to make any codification of rules governing these jurisdictional controversies. It did not undertake a statement of the various principles of agency which were to govern the solution of disputes arising from an overlapping of the interests of two or more crafts. It established the general principles of collective bargaining and applied a command or prohibition enforcible by judicial decree to only some of its phases. The contention, however, is that the rule which Congress intended to govern can be found from the implications of the Act. Thus it is argued that the reasons which support the holding in the *Virginian Ry. Co.* case that the right of majority craft representation is exclusive also suggest that Congress intended to write into the Railway Labor Act a restriction on the rules and working conditions concerning which the craft has the right to contract. It is pointed out that if the jurisdiction of a craft within which the exclusive right may be exercised is not limited, then disputes between unions may defeat the express purposes of the Act. In that connection reference is made to the statement of this Court in the *Virginian Ry. Co.* case (300 U. S. p. 548) that the Act imposes upon the carrier "the affirmative duty to treat only with the true representative, and hence the negative duty to treat with no other." That expresses the basic philosophy of § 2, Ninth. But that decision does not imply, as is argued here, that every representation problem arising under the Act presents a justiciable controversy. It does not suggest that the respective domains for two or more overlapping crafts should be litigated in the federal district courts.

It seems to us plain that when Congress came to the question of these jurisdictional disputes, it chose not to leave their solu-

tion to the courts. As we have already pointed out, Congress left the present problems far back in the penumbra of those few principles which it codified. Moreover, it selected different machinery for their solution. Congress did not leave the problem of inter-union disputes untouched. It is clear from the legislative history of § 2, Ninth that it was designed not only to help free the unions from the influence, coercion and control of the carriers but also to resolve a wide range of jurisdictional disputes between unions or between groups of employees.[10] H. Rep. No. 1944, *supra*, p. 2; S. Rep. No. 1065, 73d Cong., 2d Sess., p. 3. However wide may be the range of jurisdictional disputes embraced within § 2, Ninth,[11] Congress did not select the courts to resolve them. To the contrary, it fashioned an administrative remedy and left that group of disputes to the National Mediation Board. If the present dispute falls within § 2, Ninth, the administrative remedy is exclusive.[12] If a narrower view of § 2, Ninth is taken, it is difficult to believe that Congress saved some jurisdictional disputes for the Mediation Board and sent the parties into the federal courts to resolve the others. Rather the conclusion is irresistible that Congress carved out of the field of conciliation, mediation and arbitration only the select list of problems which it was ready to place in the adjudicatory channel. All else it left to those voluntary processes whose use Congress had long encouraged to protect these arteries of interstate commerce from industrial strife. The concept of mediation is the antithesis of justiciability.

In view of the pattern of this legislation and its history the command of the Act should be explicit and the purpose to afford

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[10] This is made clear by Commissioner Eastman, the draftsman of the 1934 amendments, in his testimony at the hearings. See Hearings, Committee on Interstate and Foreign Commerce, House of Representatives, 73d Cong., 2d Sess., on H. R. 7650, pp. 39-41, 45, 57-58, 59.

[11] It is apparently the view of the National Mediation Board that § 2, Ninth was designed to cover only those disputes entailing an election by employees of their representatives. See Brotherhood of Railroad Trainmen v. National Mediation Board, 135 F. 2d 780, 782. In an election case the Board may have to make a preliminary determination as to the eligibility of voters involving the type of problem presented here. See Brotherhood of Railroad Trainmen v. National Mediation Board, 88 F. 2d 757, dealing with the question whether brakemen having seniority as conductors could vote in the conductors' election.

[12] Whether judicial power may ever be exerted to require the Mediation Board to exercise the "duty" imposed upon it under § 2, Ninth and, if so, the type or types of situations in which it may be invoked present questions not involved here.

a judicial remedy plain before an obligation enforcible in the courts should be implied. Unless that test is met the assumption must be that Congress fashioned a remedy available only in other tribunals. There may be as a result many areas in this field where neither the administrative nor the judicial function can be utilized. But that is only to be expected where Congress still places such great reliance on the voluntary process of conciliation, mediation and arbitration. See H. Rep. No. 1944, 73d Cong., 2d Sess., p. 2. Courts should not rush in where Congress has not chosen to tread.

We are here concerned solely with legal rights under this federal Act which are enforcible by courts. For unless such a right is found it is apparent that this is not a suit or proceeding "arising under any law regulating commerce" over which the District Court had original jurisdiction by reason of § 24 (8) of the Judicial Code, 28 U. S. C. § 41 (8). Cf. *Puerto Rico* v. *Russell & Co.*, 288 U. S. 476, 483; *Gully* v. *First Nat. Bank*, 299 U. S. 109; *Peyton* v. *Railway Express Agency*, 316 U. S. 350, 352. When a court has jurisdiction it has of course "authority to decide the case either way." *The Fair* v. *Kohler Die Co.*, 228 U. S. 22, 25. But in this case no declaratory decree should have been entered for the benefit of any of the parties. Any decision on the merits would involve the granting of judicial remedies which Congress chose not to confer.

Reversed.

Mr. Justice JACKSON concurs in the result.

Mr. Justice ROBERTS and Mr. Justice REED are of the view that the Court should entertain jurisdiction of the present controversy for the reasons set out in the dissent in No. 48, *Switchmen's Union of North America, etc.* v. *National Mediation Board*, decided today.

validity the question of construction is ancillary to that of the application of the federal statute and accordingly should be regarded as governed by federal law. In any event, whether federal or state law applies, the decision should be the same.

IV

A. Although the representative of the engineers' craft alone has the right to bargain with respect to rates of pay, rules and working conditions for engineers, the representative of the firemen has the right to bargain with respect to conditions upon which the men may enter and remain in firing service. If the firemen are willing to enter into an agreement which permits demoted engineers to exercise their seniority as firemen, they should be able to protect the interests of the other firemen by imposing conditions upon the engineers' right to exercise that privilege, even if the conditions relate to the terms of employment of engineers.

B. 1. The provisions of the Firemen's contract in the *M-K-T* case regulate the order in which men are to be called into service as engineers and the manner of regulating engineers' working lists. This would seem to be beyond the power of the representative of the firemen's craft and therefore unlawful. The same is true of the Questions and Answers appended to Article 37, Section 15 of the Firemen's Agreement in the *Southern Pacific* case.

2. Section 1 of Article 43 of the Firemen's Agreement in the *Southern Pacific* case establishes conditions upon which the firemen will permit engineers to displace firemen, and is concededly valid. Sections 2, 3 and 4, though not expressed in the language of condition, deal with the same subjects, and can reasonably be construed, as they have been by the parties and by the courts below, as having been intended by the parties to be conditional. So construed they would appear to be valid. The Addendum to Article 43 is valid because it constitutes an agreement to which the representative of the engineers' craft is also a party.

V

The Firemen's agreement in the *Southern Pacific* case permits the Firemen to represent engineers who are members of the firemen's organization in the handling of grievances. We think this provision valid, if interpreted so as not to relieve the carrier of its obligation to confer with a representative of the engineers' craft on any matter relating to the interpretation or application of the Engineers' agreement. Any individual or minority group may present grievances through whomever they choose, but without prejudice to the right of the majority representative also to be consulted by the carrier. The provisions of the Act, read as a whole, are ambiguous on this point but they can most reasonably be reconciled on

this basis. The legislative and historical background of the majority rule provisions of the Act support the view that the statute does not give the majority representative the exclusive right to present grievances.

ARGUMENT

I

Resort to the Declaratory Judgment Procedure Was Proper

The Court has requested the parties to discuss the question "whether resort to the declaratory judgment procedure was proper under the circumstances." We believe that the issuance of a declaratory judgment was appropriate in these cases.

We think it clear from the statement of facts that there is a controversy between the parties. Under *Virginian Railway Co.* v. *System Federation No. 40*, 300 U. S. 515, the Engineers could have sued to enjoin the carriers from bargaining with any other organization with respect to working conditions for the engineers craft. A dispute of a type to warrant injunctive relief is a controversy in the constitutional sense and within the meaning of the Declaratory Judgment Act.[10]

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[10] *Nashville, C. & St. L. Ry. Co.* v. *Wallace*, 288 U. S. 249, 261–264. Presumably injunctive relief was not sought here in order to avoid the question raised by this Court as to the applicability of the Norris-LaGuardia Act. See p. 27, *infra*.

In the *Southern Pacific* case, the challenged provisions of Article 43 of the Firemen's Agreement (S. P. R. 604–608) are identical with provisions of the Engineers' Agreement (Article 32, Section 6, S. P. R. 435–439). The controversy does not relate, however, to the substance of the agreement but to the Firemen's right to make it. The right to bargain exclusively as the representative of a craft is itself of value and entitled to legal protection (*Texas and New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548; *Virginian Ry Company* v. *System Federation No. 40*, 300 U. S. 515), without regard for whether the terms of the contract made by the legal representative will differ from those made by anyone else. Accordingly, the court below properly held (S. P. R. 815–817) that the partial identity of the Engineers' and Firemen's contracts did not preclude the existence of an actual controversy within the meaning of the Constitution and the Declaratory Judgment Act.

Nothing in the Railway Labor Act forbids the granting of declaratory relief. Disputes as to the validity of railway labor agreements, as distinct from questions as to their interpretation or application, do not fall within the jurisdiction of the National Railroad Adjustment Board,[11] or any other administrative body. Moreover, the controversy is in substance one between labor organ-

[11] Railway Labor Act, Section 3, First (i) (45 U. S. C., Section 153, First (i)).

izations, rather than between a carrier and its employees, and the Adjustment Board is not established or organized to handle that kind of case.[12] Furthermore, even if the case were subject to that Board's jurisdiction, the Engineers had a right to bring their action in the courts without first going to the Board. *Moore* v. *Illinois Central R. Co.*, 312 U. S. 630, holds that the Board's jurisdiction is not exclusive, and *Washington Terminal Co.* v. *Boswell*, 124 F. (2d) 235 (App. D. C.), affirmed by an equally divided court, June 14, 1943 (No. 28, 1942 Term), indicates only that an independent suit for a declaratory judgment may not be instituted after a case has been taken to and decided by the Board. None of the considerations which led to the denial of declaratory relief in the *Washington Terminal* case exists here.[13]

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[12] Each division of the Board is composed of an equal number of carrier and labor members in order that each side of a dispute will have equal representation (Railway Labor Act, Section 3, First (a) (h) (45 U. S. C., Section 153, First (a) (h)).

[13] The opinion of Mr. Justice Rutledge, speaking for the Court of Appeals, in the *Washington Terminal* case, shows that the *Moore* case and the *Washington Terminal* decision are entirely compatible (124 F. (2d) at 238, 243). At this Court's request, the issue determined in the *Moore* case was reargued in the *Washington Terminal* case. We assume that the affirmance by equal division in the latter case has not impaired the authority of the former. Our views on the right of a party to resort to the courts *before* submitting a controversy to the Adjustment Board are set forth at pp. 35–49 of the "Brief for the United States as *Amicus Curiae*" filed in the *Washington Terminal* case.

Accordingly, we find no jurisdictional barrier to the issuance of declaratory judgments in these cases. There still remains the possibility that declaratory relief should be denied in the exercise of the Court's discretion. In *Great Lakes Dredge & Dock Co.* v. *Huffman,* No. 849, 1942 Term, decided May 24, 1943, this Court held that the substantive considerations of policy which guide courts of equity are applicable to suits for declaratory judgments as well as to suits for injunctions.

The granting of declaratory relief in cases involving the validity of contractual obligations is not barred by any principle of equity (cf. *Aetna Life Ins. Co.* v. *Haworth,* 300 U. S. 227) and is entirely consistent with the policy of the Railway Labor Act. The object of that statute is the peaceful and orderly settlement of labor disputes,[14] and Congress sought to achieve that end by guaranteeing employees "freedom of association"[15] and "the right to bargain collectively through representatives of their own choosing,"[16] a right which carries as a necessary concomitant the right of the representative chosen by the majority to bargain for the entire craft.[17] This

[14] Section 2 (45 U. S. C., Section 151a); see *Terminal Railroad Association* v. *Brotherhood of Railroad Trainmen,* 318 U. S. 1, 5–7.

[15] Section 2 (45 U. S. C., Section 151a).

[16] Section 2, Fourth (45 U. S. C., Section 152, Fourth).

[17] Section 2, Fourth and Ninth (45 U. S. C. 152, Fourth and Ninth).

goal can best be attained if disputes as to the lawfulness of provisions in agreements between carriers and labor organizations not representing the majority of the craft can be resolved by peaceful means rather than through economic force. Resort to the courts clearly comes within the former.

The policy of the Norris-LaGuardia Act [18] calls for no different conclusion. That statute also was designated to assist the employee in obtaining full "freedom of association" and the right to designate "representatives of his own choosing," free from employer interference.[19] Thus the policy of the Norris-LaGuardia Act as well as that of the Railway Labor Act will be aided if the representative selected by the majority of a craft can sue for a declaration invalidating agreements applicable to the same craft made between an employer and another organization. Cf. *Virginian Railway Co.* v. *System Federation No. 40*, 300 U. S. at 563.

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[18] In Point II we shall show that the Norris-LaGuardia Act does not in terms apply to these cases.

[19] Section 2, 47 Stat. 70 (29 U. S. C., Section 102). The senate Committee Report on the Norris-LaGuardia Act (S. Rep. No. 163, 72d Cong., 2d Sess., pp. 11, 13) specifically declares that the policy of that Act is to protect the rights guaranteed by the Railway Labor Act and enforced by this Court in *Texas and New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548.

II

The Norris-LaGuardia Act Does Not Prevent the Granting of Declaratory Relief in These Cases

The Norris-LaGuardia Act (47 Stat. 70, 29 U. S. C., Section 101 *et seq.*) regulates the granting only of injunctions and restraining orders. No such relief is sought in these cases. Complainants request the issuance of declaratory judgments rather than injunctions. Accordingly, the Norris-LaGuardia Act is not applicable.

Furthermore, this Court has held that the Railway Labor Act authorizes a labor organization representing a craft to sue to enjoin a carrier from treating with any other organization on behalf of the members of that craft. The Court specifically declared in the *Virginian Railway* case, 300 U. S. at 563, that the provisions of the Railway Labor Act "cannot be rendered nugatory by the earlier and more general provisions of the Norris-LaGuardia Act." Thus, even if this were a suit for injunctive relief, the Norris-LaGuardia Act would not stand in the way.

That the policy of the Norris-LaGuardia Act is not contravened by the granting of declaratory relief in this type of case has been shown in Point I, *supra*, 26.[20]

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[20] The effect of the Norris-LaGuardia Act on proceedings under the Railway Labor Act is discussed at greater length in Point I of the Government's brief in *Switchmen's Union v. National Mediation Board*, No. 48.

III

The Question Whether Construction of the Contracts is Governed by State or Federal Law

The Court has requested the parties to discuss "whether any questions of the construction of the contracts involved are governed by state or federal law."

In each of these cases the Engineers are seeking to have certain provisions of the contract between the carrier and the Firemen declared in violation of the Railway Labor Act. The cases thus involve the validity of the contracts under the Act and not their construction. Undoubtedly the issue as to the application of the Act to the contracts raises only a question of federal law.

In the *Southern Pacific* case, however, both the district court and the circuit court of appeals found it necessary to interpret the challenged provisions of the contract before determining their validity. This would appear to raise the only question of contract construction in these cases, and the precise issue to be determined is whether in this setting the contracts are to be governed by state or federal law.

Nothing in the Railway Labor Act determines what provisions as to rates of pay, rules, and working conditions, shall be included in labor agreements. These are left for the parties to decide. Cf. *Terminal Railroad Association of St.*

Louis v. *Brotherhood of Railroad Trainmen*, 318 U. S. 1, 6. The Act does, however, establish machinery to become operative when the parties cannot agree. When the parties have entered into a contract but are in dispute as to its interpretation or application, the controversy may be submitted either to the National Railroad Adjustment Board or to the courts. The awards of the Adjustment Board and the decisions of the federal courts in actions to enforce such awards may be said to constitute a body of federal law as to the interpretation of such agreements.

Although the Act does not declare that the law, as authoritatively determined in such cases, shall be uniform and controlling in all courts, both state and federal, any other result would produce the very friction and disharmony which the Act was designed to avert. Congress certainly would not have intended that after this Court, for example, had interpreted a railway labor agreement in a certain way in a proceeding brought under the Act to enforce an Adjustment Board award, the courts of the various states through which the railroad passed should be free to construe the agreement differently.[21] Even in the absence of any such controlling decision, since

[21] This would not mean that the awards of the Adjustment Board itself would be conclusive upon the state courts, since the Board's decisions do not necessarily contain the authoritative federal pronouncement on a point.

many of the agreements are effective in a number of states, there would be great practical advantages if all courts were required to look to a single body of authority in passing upon such questions.[22]

We do not regard as necessarily inconsistent with the view that federal law should be applicable either the decision in *Moore* v. *Illinois Central R. Co.*, 312 U. S. 630, that a state's interpretation of its own statute of limitations is controlling, or the line of cases in the lower federal courts holding that actions based upon railroad labor agreements do not arise "under"[23] the Railway Labor Act for purposes of federal jurisdiction.[24] A case may raise a question of federal law and yet not "arise under" the laws or Constitution within the strict meaning of the federal jurisdictional statute. Compare *Louisville & Nashville R. Co.* v. *Mottley*, 211 U. S. 149, with 219 U. S. 467. As the cases under the Federal Employers Liability Act and the Fair Labor Standards Act cases demonstrate, state courts may have juris-

[22] If state law governed, there might often be questions as to the law of which state was applicable. Thus a railroad labor agreement might be made in Chicago for a railroad whose headquarters were in California and which operated in ten or twelve far western states.

[23] See 28 U. S. C., Section 41 (1) (8).

[24] See *Malone* v. *Gardner*, 62 F. (2d) 15 (C. C. A. 4); *Burke* v. *Union Pacific Railroad Co.*, 129 F. (2d) 844 (C. C. A. 10); *Harrison* v. *Pullman Co.*, 68 F. (2d) 826 (C. C. A. 8); *Swartz* v. *South Buffalo Ry. Co.*, 44 F. Supp. 447 (N. D. N. Y.); *McDermott* v. *New York Central Railroad Co.*, 32 F. Supp. 873 (S. D. N. Y.).

diction over particular types of cases and still be bound to apply federal law. *Jenkins* v. *Kurn*, 313 U. S. 256; *Pedersen* v. *Fitzgerald Construction Co.*, 318 U. S. 740.

The Court is not called upon here, however, to determine this general question. The cases do not present the bald issue whether railway labor agreements should be construed in accordance with state or federal law. For the interpretation of the contract in the *Southern Pacific* case is ancillary to the determination as to its validity under a federal statute. As will appear from the discussion on the merits, *infra*, p. 50, the construction of the provisions involved here is largely dominated by the principle that contracts should, if possible, be interpreted in a manner which will make them lawful and operative. Thus, the question of the application of the Railway Labor Act to these contracts is intertwined with the question of construction.

This Court has held in other connections that even though the construction of a contract is a matter of state law, when the validity of a state statute claimed to impair the contract's obligation is involved, "the existence of the contract and the nature and extent of its obligation become federal questions for the purposes of determining whether they are within the scope and meaning of the Federal Constitution, and for such purposes finality cannot be accorded to the views of a state court." *Irving Trust Co.* v. *Day*, 314 U. S. 556, 561, and cases cited. There is even more reason for per-

mitting the federal courts to determine the "nature and extent" of a contract obligation when the case involves the validity of the contract itself under a federal statute. To permit the issues of construction and validity to be decided by separate tribunals is possible but not feasible in such circumstances, for the validity of each of the possible interpretations of the contract is in itself an important element in deciding which should be accepted.

In *Standard Oil Co.* v. *Johnson,* 316 U. S. 481, the Court held that it had authority to determine as a federal question even the meaning of a state statute when this was not "based purely on local law" but was controlled by regulations governed by federal law. And in *Sola Electric Co.* v. *Jefferson Electric Co.,* 317 U. S. 173, 176, the Court recognized that the doctrine of *Erie R. Co.* v. *Tompkins,* 304 U. S. 64,

> is inapplicable to those areas of judicial decision within which the policy of the law is so dominated by the sweep of federal statutes that legal relations which they affect must be deemed governed by federal law having its source in those statutes, rather than by local law. *Royal Indemnity Co.* v. *United States,* 313 U. S. 289, 296; *Prudence Corp.* v. *Geist,* 316 U. S. 89, 95; *Board of Comm'rs* v. *United States,* 308 U. S. 343, 349–350; cf. *O'Brien* v. *Western Union Telegraph Co.,* 113 F. 2d 539, 541. When a federal statute condemns an act as unlaw-

> ful, the extent and nature of the legal consequences of the condemnation, though left by the statute to judicial determination, are nevertheless federal questions, the answers to which are to be derived from the statute and the federal policy which it has adopted.

We think that these principles should be applied to the cases at bar, inasmuch as the question of interpretation is reached only because of its relationship to the basic issue as to the application of the federal statute to the contracts. The questions are interrelated and both should be regarded in these circumstances as governed by federal law.

In any event, whichever law applies, the results would be the same. There is no difference between state and federal rules in respect of the fundamental principles governing the construction of contracts. Both state and federal courts accept the rule that a contract should be given the interpretation intended by the parties,[25] and the principle that if the language permits, a contract must receive the interpretation which will make it lawful, operative, and capable of being carried into effect, if this can be done without violating the intention of the parties.[26] The

[25] See 17 C. J. S. 689, collecting cases.

[26] See 17 C. J. S. 735–738; Restatement of Contracts, sec. 236; Williston on *Contracts* (1920 ed.), sec. 620; Calif. Civil Code (Deering, 1937), sec. 1636; *Great Northern Railway* v. *Delmar Co.*, 283 U. S. 686, 691; *Davidson* v. *Kessler*, 10 Cal. App. (2d) 89 (1935). The agreement between the Southern Pacific and the Firemen involved in the *Southern Pacific* case was made in San Francisco (S. P. R. 632).

question of contract interpretation would turn upon the application of these rules to the language of these contracts, and, in the absence of controlling cases in point, it would seem to be immaterial whether state or federal law is applied.[27]

IV

The Validity of Provisions in the Firemen's Contracts Relating to the Promotion and Demotion of Engineers

A. General Principles

The *Virginian Ry.* case (300 U. S. 515, 548–549) holds that under the Railway Labor Act a carrier must bargain collectively[28] with the organization selected by the majority of the craft as the exclusive representative of that craft. The Court there sustained the granting of an injunction to restrain a carrier from bargaining with anyone but the majority organization for the crafts involved.

This means that the representative of the engineers' craft alone is entitled to bargain with

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[27] See *Earle* v. *Illinois Central R. Co.*, 167 S. W. (2d) 15, 28 (Tenn. App., 1942). We have been able to find no cases involving the interpretation of similar contract provisions in the federal courts or in the courts of the states through which the Southern Pacific operates.

[28] The duty to bargain collectively with respect to rates of pay, rules and working conditions is to be distinguished from the handling of grievances. See Point V, *infra*, pp. 54–79.

respect to rates of pay, rules and working conditions for engineers. Similarly, the representative of the firemen's craft has the sole right to enter into bargaining agreements on behalf of the firemen.

Although the principle seems clear enough, its application where the work of the two crafts is so interrelated as here is quite difficult. To take an example, the Engineers, as the representative of the engineers' craft, undoubtedly may bargain with respect to the terms on which a man working as an engineer shall be taken out of service when employment is reduced. The Firemen have the equivalent right to bargain with respect to the terms upon which men will enter into service as firemen. In practice, however, under the agreements prevailing between both organizations and the carrier, men demoted from the engineers' craft simultaneously enter the firemen's.

All parties recognize the practical necessity for this arrangement. If men to be promoted from the senior positions as firemen to junior jobs as engineers could not regain their positions as firemen when the engineers' jobs were not available to them, they might not be willing to be promoted. For steady work in the highest paying firemen's positions is preferable to sporadic and temporary assignments as an engineer (S. P. R. 185–186). The alternative would be for the carrier to hire

engineers independently of the firemen. This would be unsatisfactory to both crafts, as well as to the carrier. It would obviously prejudice the engineers, since they would be thrown out of work instead of returned to senior firemen's jobs when engineers' employment was reduced (S. P. R. 236–238). It would deprive firemen of their present right to advance to the more desirable engineers' service (M-K-T R. 284) without losing the guarantee of continuous employment resulting from long seniority as firemen. And it is clearly to the carrier's advantage to have its firemen trained and available as engineers, and not to be required to maintain a completely separate force of engineers (S. P. R. 245).

It is plain, furthermore, that the firemen have an economic interest in the conditions of employment of engineers. This does not result merely from the fact that at some time in the future the firemen will become engineers, although the interrelationship of the crafts is emphasized by the continuous movement of men back and forth between them. The plan for using the pool engineers to make emergency runs when extra engineers are not available at Smithville on the M-K-T prevents a fireman from being promoted to engineer—and thereby prevents an additional junior fireman from being put to work. (M-K-T R. 283.) And if the engineers establish high mileage limitations, fewer men will work as engineers, more engineers will

drop back to firing, and more junior firemen will be let out of service.

Several methods of applying the majority rule principle to crafts with common interests and interacting rules have been suggested. It has been proposed:

1. That in view of the movement of firemen into and out of the engineers' craft and the general interest of firemen in engineers' terms of employment, the Firemen have a right to bargain with the carrier as to all conditions of employment of engineers. The Firemen have disclaimed this extreme position (Firemen's M-K-T C. C. A. Br., pp. 27–28).

2. That the Firemen, as well as the Engineers, have a right to bargain as to all matters in which the firemen have an immediate economic interest. This theory that the two representatives have an overlapping jurisdiction would appear to be the Firemen's first position; it was accepted by both district courts and by the Circuit Court of Appeals for the Fifth Circuit in the *M-K-T* case. The latter court held that in this field an agreement by the carrier with the representative of either craft alone would be incomplete unless the representative of the other assented to it.

3. That the Firemen may not bargain as to any term of employment for engineers, but that they may fix the conditions upon which an engineer may reenter and continue in firing service, even

though these conditions may relate to the terms of employment of engineers. This would appear to be the rule adopted in the decision of the Ninth Circuit in the *Southern Pacific* case (S. P. R. 817–824).[29]

4. That the Engineers have the exclusive right to bargain with respect to engineers' terms of employment, and that the Firemen have no right to enter this field either directly or by the attachment of conditions to the rights of engineers to enter firing service. This is the Engineers' contention.

We do not believe that either of the first two of the above positions can be squared with the statutory requirement that a carrier treat only with the representative chosen by the majority of the craft with respect to rules and working conditions in that craft. Neither the general interest of the firemen in the conditions of employment for engineers nor the direct impact of some of the Engineers' rules upon firemen's work appears sufficient to deprive the men actually working as engineers of the exclusive right to bargain for themselves through their selected representative

[29] Whether the Ninth Circuit has adopted this position is not entirely clear (see R. 823–824). Although the Firemen presented the argument to that court in the *Southern Pacific* case, the court stated that it was also adopting the interpretation claimed by the Engineers (R. 823). The Firemen, not the Engineers, have petitioned for certiorari from this portion of the judgment (No. 41), and both the Petition and the Engineers' Brief in Opposition seem to assume that the court below did not sustain the validity of conditions which had the effect of governing the operation of engineers.

as to their own working conditions. We agree with the Engineers that the ebb and flow of men between the crafts does not decrease the Engineers' right to represent in collective bargaining men in engineers service, and that there is no overlapping of jurisdiction whenever the firemen have an economic interest in the rules governing engineers' activities.

The Firemen, however, have the right to bargain with respect to the terms upon which men may enter or remain in firing service. The Firemen and the carrier are not required to permit the demoted engineers to return to firing. If they decide to grant the engineers that privilege, we do not think that the Act forbids them to protect the interests of the other firemen by appropriately conditioning its exercise. They are still bargaining with respect to firemen's working conditions when they provide, for example, that a demoted engineer may return to firing service only if engineers are not demoted until their mileage goes below a prescribed minimum and if the demoted engineers will be taken back into engineers service when the mileage of the remaining engineers reaches a specified higher level. And although the Firemen could not, in our view, directly seek to prescribe the order in which men should be called to work as engineers,[30] we think it competent for them to

[30] The Firemen might bargain with respect to the order in which men must cease firing, but could not contract as to the order in which they must be taken into service as engineers.

contract that demoted engineers may avail themselves of their seniority as firemen only on condition that they be called back to engineers' service in a certain order when openings are available.

In each of the illustrations given, the conditions imposed upon the right to work as firemen are designed to safeguard the rights of other firemen and thus are a legitimate subject of bargaining by the firemen's representative. Our position as to the right of the Firemen to enter into agreements which grant engineers conditional rights as firemen would not permit the use of the condition as a method of controlling engineers' terms of employment which do not immediately affect the economic interest of the firemen.

We recognize, of course, that if the Firemen may condition the right of engineers to work as firemen in such a way as to protect their own economic interests, the practical effect may be substantially the same [n] as if their jurisdiction overlapped that of the Engineers. But this results from the fact that the Engineers and the carrier choose not to abandon the system whereby an engineer preserves his valuable fireman's seniority and the right to reenter the firemen's craft at the top whenever the engineers' working force is reduced. The engineers could escape from any conditions imposed by the Firemen by giving up that

[n] This assumes that the Firemen's agreements are or will be drafted so as to fit in which the theory of conditions discussed above.

right, which is derived from the Firemen's agreement. But as long as they retain it, they subject themselves to the necessity of harmonizing their views with those of the firemen on matters which are of concern to both crafts.

In such circumstances the desirability of a joint agreement or of uniform provisions in the Engineers' and Firemen's schedules is obvious (S. P. R. 209–228, 259–260). If the two organizations are unable to agree, each may enter into a separate contract with the carrier with different provisions to the extent that the carrier deems that to be workable.[32] If the carrier should find, as well it might, that it could not in practice prescribe rules for engineers different from the conditions applicable to the reentrance of engineers into firing service, it could insist on uniformity in such provisions, and if the two organizations would not agree, could enter into a valid agreement with one (or with neither) and prescribe the conditions for the other craft (or for both), as in any case where an employer and the bargaining representative are unable to agree.

B. THE APPLICATION OF THE ABOVE PRINCIPLES TO THE CONTRACTS INVOLVED HERE

Our conclusion from the above analysis of the applicable principles is that the Engineers have the exclusive right to contract with respect to the

[32] The Addendum to Article 43 in the Southern Pacific agreement makes specific provision for the situation in which the engineers and the firemen have different mileage limitations (S. P. R. 629–632).

rules and working conditions of engineers, including the terms under which men enter into and leave engine service, that the Firemen have the independent right to determine the conditions upon which men enter into, remain in or leave firing service, and that these conditions may relate to the terms of the employment of engineers insofar as they directly affect the firemen. We will now seek to apply these principles to the provisions of the contracts involved in these cases.

1. The M-T-K Case

a. *The First and Third Paragraphs of the December 12, 1940 Agreement.* Before the challenged Agreement made by the Firemen on December 12, 1940 (M-K-T R. 27), the agreement between the Engineers and the M-K-T provided that when the use of emergency engineers became necessary, the senior available man having his home terminal in the place where the service was to begin should be employed, except where the fireman assigned to the run had greater seniority as an engineer (M-K-T R. 116–118). At Smithville, by special agreement between the Engineers and the carrier, the regular pool engineers were to be used for emergency service (M-K-T R. 119–126). The contract between the carrier and the Firemen provided, in lieu of both of the above arrangements, that (M-K-T R. 27)

> (1) Effective February 1, 1941, it is agreed when necessary to call a demoted engineer who is back firing to perform

service as engineer, the senior available demoted engineer will be called.[33]

The effect of this was to eliminate the advantage given men at their home terminal generally and that given members of the engineers' pool at Smithville.

This paragraph of the 1940 Agreement regulates the order in which men are called to service as engineers. It does not merely determine the order in which they shall stop working as firemen. This appears clearly from the effect of the new rule upon the practice in the Smithville district. The rule previously in effect there did not even pertain to demoted engineers working as firemen; it provided for spreading the work in case of emergency among the pool engineers without recourse to such demoted engineers. This is a subject clearly within the exclusive jurisdiction of the representative of the Engineers. For the firemen's representative to compel the Engineers to use demoted engineers instead of rotating the en-

[33] The third paragraph of the Agreement stated that the question as to Smithville would be disposed of by exchange of letters, and in a letter of the same date, the carrier agreed:

* * * "steps will be taken to adjust the complaint with reference to handling of demoted engineers who are back firing at Smithville to conform to Item 1 of the Mediation Agreement, Case A-836, dated today. That is to say, the practice in filling vacancies on engineers' pool board at Smithville will be the same as present practice at other district terminals on the railroad." * * * (M-K-T R. 31.)

This was accepted by the Firemen (M-K-T R. 32).

gineers' pool seems to be a clear infringement upon the right of the Engineers to regulate their own affairs. We conclude that the Engineers had the exclusive right to bargain with respect to the entry of men into engineers' service, and that these provisions of the Firemen's agreement with the carrier are invalid.

b. *The Second Paragraph.* Paragraph 2 of the Agreement of December 12, 1940 (M-K-T R. 27–31), deals with the manner of regulating the "working lists." As interpreted by the parties (M-K-T R. 149, 158, 286), it means that the management will regulate the lists, in consultation with the two brotherhoods. The prior practice had been for the Engineers to regulate the lists for engineers themselves.

By regulation of the working lists is meant the original assignment of a man to a list, the assignment of men on the lists to particular jobs, and also the transfer of men from one list to another. In so far as men working as engineers are concerned, the determination as to how these lists should be handled is the establishment of a rule for the governing of the craft of engineers. As such, it falls within the exclusive jurisdiction of the representative of the engineers' craft. We therefore conclude that the Firemen could not lawfully treat with the carrier on this subject in so far as engineers are concerned. The paragraph, on its face, would also seem to apply to the Firemen's working lists, and the Firemen, of

course, have the power to enter into such an arrangement on behalf of the craft which they represent. The paragraph is thus invalid only in so far as it is applied to engineers.

2. The Southern Pacific Case

a. *Article 43, Secs. 1, 2, 3, 4, and 6.*—The Engineers' complaint in the *Southern Pacific* case attacks the validity of Article 43, Sections 1, 2, 3, 4, and 6 and Addendum of the agreement entered into between the carrier and the Firemen on July 1, 1939 (S. P. R. 6–12). Section 6 of Article 43 clearly relates only to firemen and the Engineers seem to have abandoned any attack upon it.[34] The Engineers now also concede the validity of Section 1.[35] But since this section vitally affects those which follow, all must be read together.

Section 1 provides (S. P. R. 604):

> Sec. 1. When, from any cause, it becomes necessary to reduce the number of engineers on the engineers' working list on any seniority district, those taken off may, if they so elect, *displace any fireman* their

[34] This section reads as follows (S. P. R. 608):

"In making reductions and replacing firemen upon the service lists, the same mileage shall apply as in the case of engineers."

The Engineers' brief in the circuit court of appeals contains no argument as to the invalidity of this section.

[35] See Brief for the Appellant in the circuit court of appeals, p. 78.

junior on that seniority district *under the following conditions:*

First: That no reduction will be made so long as those in assigned or extra passenger service are earning the equivalent of 4,000 miles per month; in assigned, pooled or chain-gang freight, or other service paying freight rates, are averaging the equivalent of 3,200 miles per month; on the road extra list are averaging the equivalent of 2,600 miles per month, or those on the extra list in switching service are averaging 26 days per month.

Second: That when reductions are made they shall be in reverse order of seniority. [Italics supplied.]

This section states the terms upon which the Firemen will permit engineers to displace firemen. No displacements will be allowed so long as engineers are earning the equivalent of a specified number of miles per month. The effect of this rule is to impose a particular minimum mileage limitation upon the engineers, if they wish to exercise their valuable right to return to firing. The Engineers concede that the Firemen have the right to contract to this effect because the provisions as to engineers' mileage are expressed as a condition of the right to replace firemen.

Sections 2, 3 and 4 are not expressed in the language of condition, but all are included in the Agreement for the same reasons as are the conditions set forth in Section 1. The object of Section

1 is to require engineers to spread their work among themselves to a reasonable extent before exercising their privilege to displace firemen. The normal tendency of the engineers, so long as senior firemen's jobs are open to them, would be to concentrate engineers' work in as few hands as possible, thereby increasing the earning power of men working as engineers; the junior engineers would not suffer, since they would work steadily in the senior firemen's jobs. Men in firemen's service protect themselves against such a disposition of the engineers' work through the mileage limitation contained in Section 1.

Sections 3 and 4 obviously are correlative parts of the same scheme. Section 3 provides that "engineers taken off under the rule", and thereby working as firemen, "shall be returned to service as engineers" in order of seniority, when engineers' mileage has risen to a specified figure. In other words, as soon as there is more work available for engineers, the engineers working as firemen must return to engineers' service so that the firemen may resume their former positions.

Section 4 provides that engineer assignments shall be so regulated as to keep the mileage between the minimum prescribed in Section 1 and the maximum fixed in Section 3. It thus complements those sections.[36] It would seem to be some-

[36] Section 4 establishes maximum mileage limitations for services not covered in Section 3. Section 3 reaches only regular passenger and freight service. Sections 1 and 4 also apply to road and yard extra lists.

what broader than Section 3, since it does not relate solely to demoted engineers working as firemen. Nevertheless, its object is to establish maximum mileage limitations for engineers which will not bar the advancement of firemen up their own seniority lists and into engineers' service.

Section 2 is less important, since it deals only with the few remaining "hired engineers"—men who did not advance to engineers' service from the ranks of firemen.[37] The section provides merely that:

> When hired engineers are laid off on account of reduction in service, they will retain all seniority rights; provided, they return to actual service within 30 days from the date their services are required. (S. P. R. 604.)

This would seem to relate only to engineers; but the firemen have an interest in not letting such engineers retard the promotion of demoted engineers to engineers' service. Hence the proviso that hired engineers forfeit their rights unless they return to service within 30 days from the date their service is required.[38]

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[37] The Southern Pacific has not engaged engineers in this manner since 1920 and only a few hired engineers remain in its employ (S. P. R. 137).

[38] Hired engineers are also given seniority dates as firemen corresponding to their dates as engineers (S. P. R. 172, 283). Section 2 may also apply to the rights of hired engineers as firemen, and to that extent is undoubtedly lawfully within the Firemen's Agreement.

The question as to the validity of Sections 2, 3, and 4 presents the same issue. We think that the Firemen and the carrier could have made their consent to the reentry of engineers into firemen's service conditional upon the terms prescribed in those sections in the same manner as in Section 1. The agreement does not, however, use the language of condition as to those sections, unless the "following conditions" referred to in Section 1 include Sections 2, 3, and 4. Clearly they do not as a matter of grammatical construction. But both parties to the Agreement, the Firemen and the carrier, took the position in the courts below that they interpreted Sections 2, 3, and 4 as conditions upon the right of engineers to enter and continue in firemen's service. Both the district court and the circuit court of appeals held that the Agreement should be construed to mean what the parties to it intended it to mean; both courts accordingly concluded that all the sections (S. P. R. 52, 56, 818–819)—

> * * * were and are *intended* to set forth conditions upon which an engineer has the privilege of displacing a fireman and of continuing such displacement. None of said provisions was or is *intended* to or does regulate the craft of engineers apart from the privilege of a member of that craft to displace a fireman, or prevent the craft of engineers from contracting with the defendant as to different maximum or

minimum miles or hours. [Italics supplied.]

The circuit court of appeals explained that the effect of this construction would be merely to make clear that the "following conditions" referred to in Section 1 included Sections 2, 3, and 4, and ordered the "interpretation" quoted above inserted in the judgment declaring the rights of the parties (S. P. R. 818–819).

If Article 43 were not so interpreted, we would regard Sections 2, 3, and 4 as beyond the power of the Firemen and therefore unlawful. But we think that the Article, like other contractual provisions, should be interpreted, if possible, in a manner which will make it lawful, operative, and capable of being carried into effect.[39] When such a lawful interpretation coincides with the views of both parties,[40] a court may well depart to some extent from grammatical construction in order to reach the result that the parties intended.[41] Ac-

[39] Inasmuch as both state and federal courts give effect to the general rules that contracts are to be construed in accordance with the intent of the parties and so as to make the contract lawful and operative, it is not material which law applies to this question of contract interpretation. See p. 33, *supra*.

[40] We confess that we are baffled by the fact that the Firemen rather than the Engineers are now attacking the decision below on this point.

[41] Cf. *Church of the Holy Trinity* v. *United States*, 143 U. S. 457; *Lau Ow Bew* v. *United States*, 144 U. S. 47; *United States* v. *Kirby*, 7 Wall. 482; *United States* v. *American Trucking Assns.*, 310 U. S. 534, 543, and cases cited.

cordingly, we conclude that Sections 2, 3, and 4 should be interpreted as conditions upon the right of engineers to replace and continue as firemen, and that so construed they are valid.

b. *Addendum to Article 43.*—The Firemen's Agreement contains as an Addendum excerpts from a letter written by the Chairman of the National Mediation Board which sets forth an understanding agreed to by officials of the Engineers, the Firemen, and the carrier concerning the method of applying mileage limitations to men working part time as engineers and part time as firemen (S. P. R. 629–632). The formula set forth in this letter is "to permit each organization to regulate the conditions of the part-time man during the time that these men are employed at the occupation covered by such organization" (S. P. R. 630). This would seem to be exactly what the law requires, inasmuch as it allows the Engineers to regulate the part-time men while they are working as engineers, and the Firemen while they are working as firemen. In addition, this letter constitutes the written expression of an agreement made between the Engineers, the Firemen, and the carrier (S. P. R. 167–168, 629–630). As long as the engineers' representative is a party to the agreement, the engineers cannot complain that it was not made with the authorized representative of their craft. Inasmuch as the representative of the engineers

could undoubtedly lawfully enter into such a tripartite agreement, the fact that the Firemen also signed it on behalf of the firemen's craft and then incorporated it in their general schedule does not make the Addendum unlawful.

c. *Article 37, Section 15, Questions and Answers.*—The Questions and Answers appended to Article 37, Section 15, of the Firemen's Agreement, prescribe the order in which firemen or demoted engineers may be called to service as engineers.[42] This covers substantially the same subject as the first paragraph of the agreement involved in the *M-K-T* case, and for the reasons set forth in our discussion of that paragraph (*supra*, p. 42), we would conclude that the Questions and Answers were also unlawful.

The carrier took the position in the court below, however, that when read in the light of the section to which they were appended, the Questions and Answers related exclusively to the individual's

[42] These Questions and Answers read as follows (S. P. R. 587):

"Question: (a) If it becomes necessary to call a fireman for service as an emergency engineer, when the engineers' extra list is exhausted, who should be called?

"(b) Should a senior demoted engineer holding assignment as fireman become available after man used under (a) returns to terminal or completes day's work, who should be used?

"Answer: (a) The senior available qualified man in accordance with his seniority as engineer.

"(b) The senior available man."

earnings as a fireman. The substantive portion of Section 15 provides that a fireman assigned to a regular run and called for other service will be paid no less than he would have received on his assigned run.[18] The purpose of the Questions and Answers is said to be to protect a senior fireman against evasion of the rule guaranteeing his earnings through the calling of a junior fireman who would not be entitled to more pay for his assigned run than for the emergency service (S. P. R. 169–172).

We find it difficult to see how the Questions and Answers, as now set forth, can be regarded as relating exclusively to earnings as firemen. If they could be so construed, they would be valid, since it is, of course, proper for the representative of the Firemen to enter into an agreement on that subject. The court below held that they were "valid only insofar as they relate to their rights of firemen as such under said section," but "invalid * * * insofar as they relate to entry of a fireman into the craft of engineers" (S. P. R. 826). This ruling safeguards the construction suggested by the carrier, and we believe that it should be affirmed.

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[18] The Section is quoted *supra*, p. 15. See also S. P. R. 587.

V

THE RAILWAY LABOR ACT DOES NOT GIVE THE MAJORITY REPRESENTATIVE THE EXCLUSIVE RIGHT TO PRESENT GRIEVANCES

Article 51 of the Firemen's agreement in the *Southern Pacific* case provides (S. P. R. 616):

> ARTICLE 51
>
> ADJUSTMENT OF DIFFERENCES
>
> SEC. 1. The right of any *engineer*, fireman, hostler or hostler helper to have the regularly constituted committee of his organization represent him in the handling of his grievances, in accordance with the laws of his organization and under the recognized interpretation of the General Committee making the schedule, involved, is conceded. [Italics supplied.] "

The Engineers contend that the Firemen have no right to represent men working as engineers in the handling of grievances, and accordingly

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"An identical provision was contained in the Chicago Joint Agreement of 1913 between the Engineers and the Firemen, in all Firemen's agreements with the Southern Pacific since 1915, and in the Engineers' agreements with the Southern Pacific between 1915 and 1931. Article 32, Section 22, of the Engineers' agreement of January 9, 1931, now in effect, provides that "in matters pertaining to discipline, or other questions not affecting changes in Engineers' contract, the officials of the Company reserve the right to meet any of their employes either individually or collectively." See Plaintiffs' Exhibit 8, S. P. R. 660–663.

that the word "engineer" in the above Article should be declared unlawful. The Firemen and the carrier take the position that although the Engineers may be the exclusive representative of the craft of engineers for purposes of collective bargaining, the Act does not give to such a representative the exclusive right to represent all members of the craft in the handling of grievances.

The Act differentiates between disputes as to what shall be included in agreements and disputes as to the rights of individuals under agreements already made. The former are generally referred to as disputes relating to "rates of pay, rules, or working conditions,"[45] and the latter as disputes growing out of "grievances or the interpretation or application of agreements."[46] Disputes of the first class fall within the jurisdiction of the National Mediation Board and those of the second class within that of the National Railroad Adjustment Board. All parties concede as a general principle (with the qualifications considered in Point IV) that matters relating to the making and changing of agreements concerning rates of pay, rules and working conditions lie within the exclusive jurisdiction of the representative selected by the majority of the

[45] See Section 2, *General Purposes*, (4); Section 2, First; Section 2, Seventh; Section 5, First (a); Section 6.

[46] See Section 2, *General Purposes*, (5); Section 2, Sixth; Section 3, First (i).

craft. The question here to be decided is whether the same is true as to the handling of grievances and the interpretation and application of agreements.

The word grievance is, of course, broad enough to reach all types of disputes between a carrier and its employees, but it obviously is not so used in the Railway Labor Act. In general, the expressions "grievance" and disputes arising "out of the interpretation or application of agreements" are used interchangeably,[47] although the statute's use of

[47] The House Committee report on the Act (H. Rep. 1944, 73d Cong., 2d sess.) states (p. 2):

"The second major purpose of the bill is to provide sufficient and effective means for the settlement of minor disputes known as 'grievances', which develop from the interpretation and/or application of the contracts between the labor unions and the carriers, fixing wages and working conditions."

At the hearings before the House Committee on Interstate and Foreign Commerce (H. R. 7650, 73d Cong., 2d sess.), Mr. George M. Harrison, testifying on behalf of the Railway Labor Executives' Association, usually referred to the disputes falling within the jurisdiction of the Adjustment Board as "grievances" (p. 81); in his description of the type of cases coming within that classification, he stated (p. 80):

"The next general question covered by the act is that of establishing machinery to settle controversies that grow up between management and employees over the meaning or the allocation [application] of the contracts that have previously been made. Now, as a brief explanation of the character of those disputes, they might very well concern a man's seniority, whether or no his date is the proper date; might very well concern whether or no he has been paid the proper amount of compensation for a particular class of work performed, as the contract provides should be paid. It may very well concern the separation of an employee from the

both terms would indicate some difference in meaning. "Grievances" would appear to be the broader term, and, when used in Article 51, undoubtedly was intended to include cases arising out of the interpretation and application of agreements. In order to avoid repeating both expressions, we shall refer to all such cases hereafter as "grievances."

Although the Act differentiates between the handling of grievances and the negotiation of agreements, the disposition of grievances is often of great importance to the organization representing a craft as well as to the individuals involved. The agreement made between the majority organization and the employer can only be authoritatively interpreted by them, not by the employer and an individual employee or a minority representative. In recognition of this principle, Article 51 of the Firemen's Agreement expressly provides that all grievances be handled "under the recognized interpretation of the General Committee making the schedule." (See S. P. R. 265.) Questions as to the application of the agreement, to the extent that they can be distinguished from questions of interpretation, are also of concern to the representative since it

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service, whether or no he has been unjustly dismissed. It very well may concern the promotion of a man, whether he should have been accorded promotion, in accordance with his ability and his seniority in keeping with the rules of the contract; whether or no he was laid off in his seniority order; if he had not been taken back in his seniority order."

is essential that the agreement be uniformly applied to all members of the craft. And this is also true, although perhaps to a lesser degree, of questions of discipline and other matters not so closely related to the collective bargaining agreement.

Grievances, however, do differ from the making and general interpretation of the agreements, inasmuch as each case involves the rights of a particular individual or group of individuals in the craft, and the case is likely to be of especial importance to the person or persons concerned. Often, as in seniority disputes,[48] the interests of different members of a craft conflict. There are cases where the aggrieved individual is not in good standing with or eligible to membership in a majority organization, or is on bad personal terms with its officers.[49] And, as in this case, the aggrieved employee may be a member of a rival union. In such cases an employee might properly

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[48] *E. g.*, *Nord* v. *Griffin*, 86 F. (2d) 481 (C. C. A. 7), certiorari denied, 300 U. S. 673; *Ledford* v. *Chicago, M., St. P. & P. R. Co.*, 298 Ill. App. 298, 18 N. E. (2d) 568.

[49] Negroes are ineligible for membership in many of the railway labor organizations; it is frequently claimed that they are subject to discrimination by the majority representative. See the facts alleged in *Teague* v. *Brotherhood of Locomotive Firemen*, 127 F. (2d) 53 (C. C. A. 6) (dismissed on jurisdictional grounds). As to alleged discrimination against nonunion members, see the *Nord* and *Ledford* cases, *supra*, note 48. As to an employee not in good standing with the organization, see *Moore* v. *Illinois Central R. Co.*, 312 U. S. 630.

feel that his interests were not receiving adequate protection if he was required to permit the majority organization to represent him.

We thus have a situation in which the majority representative has a legitimate concern that grievance cases shall not be so handled through another representative as to establish an interpretation unacceptable to it or interfere with the uniform application of the collective bargaining agreement and in which, on the other hand, it may often be unfair to compel employees to submit their grievances through the majority representative.

The question in this case is whether the Act itself prohibits an individual from being represented by anyone he chooses in grievance matters. As will appear, we believe that this question should be answered in the negative. This conclusion that the majority union does not have the *exclusive* right to represent members of the bargaining unit in the handling of grievances does not, however, mean that it has no interest or right to appear. The individual employee has the right to select the person to present and argue his case for him, but he has no right to prevent the representative of the majority from participating in any proceeding affecting the agreement to which it is a party. Indeed, in so far as the subject of a grievance is covered by the collective agreement, the majority organization would appear to be a necessary party to any negotiations involv-

ing its interpretation or application. The process of collective bargaining may be said to include not only "the creation of an agreement" but also "the enforcement and interpretation of the agreement throughout the months of its duration." Carroll R. Daugherty, *Labor Problems in American Industry* (Rev. ed., 1938), p. 450. It is upon this basis that we think the provisions of the Act may best be harmonized and its objects best achieved.

If Article 51 is construed, as it well can be, as permitting the carrier, when an individual engineer's case is being presented by the Fireman, also to consult with the Engineers whenever their agreement is affected, it would appear to be valid.

A. THE LANGUAGE OF THE ACT

The requirement that a carrier "treat with" the representative selected by the majority of a craft is derived in the first instance from Section 2, Paragraphs Fourth and Ninth. They provide—

> Fourth: Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. * * *
>
> * * * * *
>
> Ninth: * * * Upon receipt of such certification the carrier shall treat with the

> representative so certified as the representative of the craft or class for the purposes of this Act. * * *

The first sentence of Paragraph Fourth, with its specific reference to the right to "bargain collectively," affords some support for the view that the function of the majority representative was to bargain, i. e., to negotiate and maintain contracts. But since both passages state that the representative selected shall be "the representative of the craft or class *for the purposes of this Act*," it is necessary to turn to other provisions of the Act for guidance.

The "purposes of the Act" are set forth at the beginning of Section 2 in a paragraph headed "General Purposes." This paragraph declares that the Act is designed (1) to avoid interruptions to commerce, (2) and (3) to prohibit employer interference with the employees' right of self-organization, (4) "to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions," and (5) "to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions." Since the settlement both of major disputes as to the terms of contracts and of minor disputes as to grievances are included in these purposes, it can be argued that the representa-

tive of the craft or class chosen "for the purposes of this Act" under Paragraphs Fourth and Ninth has equal authority over both subjects.

This interpretation is supported by Paragraphs Second and Sixth of Section 2. Paragraph Second provides that "*all* disputes * * * shall be considered, and, if possible, decided * * * in conference between representatives designated and authorized" by the parties "interested in the dispute." There is no differentiation between grievances and other matters in the requirement that there be conferences between authorized representatives. Section 2, Sixth, deals specifically with the procedure for the handling of grievances. It provides that in case of a dispute as to grievances "it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees * * * to specify a time and place at which such conference shall be held * * *."

Although these paragraphs support the Engineers' position, they are susceptible of a narrower construction. The paragraphs require that conferences be held between the carrier and the designated representative of the craft or class and that the disputes be decided in such conferences. They do not, however, state specifically that individuals who desire some one other than such representative to present their grievances to such a conference may not do so. An individual choosing a

different representative for this purpose would thus have his grievance submitted to the carrier and the craft representative jointly, with the latter acting on behalf of the craft generally. Such a procedure closely parallels that which the Act prescribes for the handling of grievances before the Adjustment Board; there the aggrieved employee may select anyone to represent him, but he submits his case to a joint board and not to the carrier alone. Only if Paragraphs Fourth and Sixth of Section 2 are so construed can they be reasonably reconciled with other provisions of the Act now to be discussed.

Section 3, First (i), states that "disputes between an *employee* or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions * * * shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes"; if the disputes are not adjusted in this manner, they may be referred by "either party" to the Adjustment Board. Paragraph (j) then provides—

> (j) Parties may be heard either *in person, by counsel, or by other representatives, as they may respectively elect,* and the several divisions of the Adjustment Board shall give due notice of all hearings *to the*

> *employee* or employees and the carrier or carriers involved in any disputes submitted to them. [Italics supplied.]

These two paragraphs plainly contemplate that a grievance case may be brought by a single employee or by a group and not necessarily by the representative of the entire craft. They also show that the employee or employees involved may be heard before the Adjustment Board through any representative they may elect.[50] We think that these provisions indicate that Congress did not place the handling of grievances within the exclu-

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[50] In support of this construction, see Hearings, House Committee on Interstate and Foreign Commerce, on Railway Labor Act Amendments (H. R. 7650, 73d Cong., 2d Sess.), p. 83 (testimony of George M. Harrison on behalf of the Railway Labor Executives Association); *Nord* v. *Griffin*, 86 F. (2d) 481 (C. C. A. 7), certiorari denied, 300 U. S. 673; *Estes* v. *Union Terminal Co.*, 89 F. (2d) 768 (C. C. A. 5); the opinion of the Ninth Circuit in the *Southern Pacific* case (S. P. R. 807–815); Spencer, *The National Railroad Adjustment Board* (University of Chicago Press, 1938), p. 39; (S. P. R. 295). The employee members of the Adjustment Board have, however, refused to permit the Board to hear cases not submitted by the organization representing the majority of a craft or class. Attorney General's Committee on Administrative Procedure, Monograph No. 17, *Railway Labor*, pp. 15–16. In at least three instances referees appointed to break such deadlocks have held that individuals have no standing before the Board. *Gooch* v. *Ogden Union Ry. Co.*, National Railroad Adjustment Board, Second Division, Award No. 514 (Referee McAllister); *Everly* v. *Erie R. Co.*, *id.*, Award No. 515 (Referee McAllister); *Rudd* v. *Minneapolis, etc., Ry. Co.*, National Railroad Adjustment Board, Third Division, Award No. 1718 (Referee Sharpe).

sive control of the majority representative. The granting by Congress to an employee of the right to choose any representative to act on his behalf before the Board in the later stages of the adjustment process is indicative of a similar intent in the preliminary negotiations with the carrier.

The provision in Paragraph (i) that the dispute should be handled "in the usual manner" also is pertinent. The testimony in the *Southern Pacific* case (S. P. R. 165, 205–208, 234–235) discloses that it was the customary practice on the Southern Pacific and railroads generally for a fireman or engineer involved in a grievance matter to select as his representative the organization of which he was a member, or anyone else he pleased, and not necessarily the organization representing the entire craft. It seems clear, in view of its approval of the "usual manner" of handling grievances that Congress intended to confirm rather than to destroy the established practice in this respect.

Another indication as to the congressional intention that employees be permitted to confer with management apart from the authorized representative of the craft is the proviso at the end of Section 2, Fourth—

> * * * That nothing in this Act shall be construed to prohibit a carrier from permitting *an employee, individually,* or local representatives of employees from conferring with management during working hours without loss of time, * * *. [Italics supplied.]

Although this does not state specifically that it applies to grievances, that would be a normal subject upon which employees and management would confer. And, of course, if the Act does not prohibit such conferences during working hours, it does not prohibit them altogether.

From this analysis of the Act, it would appear that Paragraphs Second and Sixth of Section 2, read in the light of the references to the purposes of the Act in Paragraphs Fourth and Ninth and the enumerated "General Purposes," indicate that the carrier was to confer with the majority representative on grievance matters, and that Section 3, First (i) and (j) and other portions of Paragraph Fourth of Section 2 suggest that the individual was not to be prohibited from selecting any representative he desired to present his case. We have suggested (*supra,* pp. 59–60, 62) that Paragraphs Second and Sixth may be construed as permitting individual representation in grievance matters without prejudice to the right of the majority representative also to be consulted by the carrier. It is upon this basis that we believe the various provisions of the Act most easily reconcilable. That this construction, though not compelled by the bare language of the Act, corresponds most closely with the intention of Congress is, we think, shown by the historical background of the majority rule provisions and their legislative history.

B. THE HISTORICAL AND LEGISLATIVE BACKGROUND OF THE MAJORITY RULE PROVISIONS SHOW THAT THE RIGHTS OF THE MAJORITY REPRESENTATIVE DO NOT EXTEND TO THE EXCLUSIVE HANDLING OF GRIEVANCES

Although the National War Labor Board created by President Wilson in 1918 gave governmental recognition to the doctrine of majority rule,[51] that principle was first explicitly defined by the Railroad Labor Board created by Title III of the Transportation Act of 1920.[52] In its Decision No. 119,[53] that Board ordered the carriers and employees to carry out the statutory mandate in Section 301 of the 1920 Act that they consider and decide all disputes "in conference between representatives designated and authorized by the parties" by conforming to a number of enumerated "principles." The fifteenth of these was as follows:

> 15. The majority of any craft or class of employees shall have the right to determine what organization shall represent members of such craft or class. Such organization shall have the right to make an agreement which shall apply to all employees in such craft or class. *No such*

[51] National War Labor Board, *Principles and Rules of Procedure*, reprinted in United States Department of Labor Annual Report for 1919, p. 1273. See also United States Department of Labor, Bureau of Labor Statistics, Bull. No. 287, *National War Labor Board* (1912).

[52] 41 Stat. 469, Section 300, *et seq.*

[53] Decision No. 119, 2 Railroad Labor Board, pp. 87, 96.

> *agreement shall infringe, however, upon the right of employees not members of the organization representing the majority to present grievances either in person or by representatives of their own choice.* [Italics supplied.]

This principle was applied by the Board in deciding specific cases,[54] and was found by the Court[55] to be lawful, as a reasonable means of insuring that conferences would be held by the representatives of the parties in the manner required by the Act. It is to be noted that Principle 15 specifically stated that the members of the craft (at least those not members of the majority organization) were not required to be represented by the majority representative in the handling of grievances.

The meaning of the doctrine of majority rule in this respect did not again come into question until 1934. In that year the labor boards established under the National Industrial Recovery Act (48 Stat. 195) were faced with the problem, and in the same year the amendments to the Railway Labor Act were prepared and enacted.

The question was presented to Federal Coordinator of Transportation Eastman, who explained to the congressional committees the bill

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[54] See Decisions Nos. 173, 174, 218, 220, *id.*, pp. 171, 173, 207, 216, and Decision No. 3117, 6 *id.*, p. 444.

[55] *Pennsylvania Railroad* v. *Railroad Labor Board*, 261 U. S. 72, 84–85.

which became the Railway Labor Act. In his testimony before the House Committee on Interstate and Foreign Commerce, he indicated that the Act was designed to conform to the old Railroad Labor Board Principle 15. He testified (Hearings before the House Committee on Interstate and Foreign Commerce on Railway Labor Act Amendments (H. R. 7650), 73d Cong., 2d Sess., p. 44):[56]

> * * * the point was raised as to whether or not the provision in the fourth paragraph of section 2 on page 6, beginning at line 7, to the effect that "the majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this act," would prevent an individual or a group of individuals, not belonging to the organization, from presenting their grievances directly to the management.
>
> I find that the old Railroad Labor Board, in laying down certain rules in regard to these matters, covered that point in the following language. I take this from the opinion of the Supreme Court in *Pennsylvania Federation* v. *Pennsylvania Railroad Company* (267 U. S. 203), in which this rule laid down by the board is quoted:
>
> "The majority of any craft or class shall have the right to determine what organization shall represent members of such craft

[56] See also p. 36.

or class. Such organization shall have the right to make an agreement which shall apply to all members in such craft or class. No such agreement shall infringe, however, upon the right of employees not members of the organizations representing the majority, to present grievances either in person or by representatives of their own choice."

I think some such qualification should be contained in this act. In providing that the majority shall determine what shall be the representation, we are really dealing with the subject of collective bargaining. When it comes to collective bargaining in the matter of wages and working conditions, it seems to me plain that a company ought not be compelled to deal with more than one organization. It ought not to have to make bargains with two or three different organizations. But when it comes to the presentation of grievances, that is a different matter, and certainly an individual employee ought not be stopped in any way from taking his grievance up directly with the management, and I think that ought to apply to any other group of employees. However, with your permission, I should like to work out an amendment which will cover that point * * *.

The same interpretation was advocated by Mr. George M. Harrison, who testified in support of the bill on behalf of the Railway Labor Executives Association. Mr. Harrison proposed that a

clarifying amendment be added to the majority rule sentence in Section 2, Fourth—

> * * * *to make it clear* that the individual employee, or a group of individuals involved in grievances, are not prevented from having representatives to handle their grievances that are not representatives of the majority. (*Id.*, p. 89.) [Italics supplied.]

The amendment would have given the majority of the craft the right to determine representation only "for the purposes of making and revising agreements concerning rates of pay, rules, and working conditions."[57] Mr. Harrison then explained (*ibid.*):[58]

> Now, that makes it clear that the majority of any craft or class of employees shall have the right to designate who shall be the representative of the craft or class for the purpose of making and revising agreements concerning rates of pay, rules, and working conditions, and leaves the balance of the act in connection with grievances unimpaired, or at least, with no inference that it shall

[57] Although Railroad Labor Board Principle No. 15 only guaranteed the rights of employees not members of the majority organization to present grievances individually, the proposed amendment and the material discussed below contain no such limitation. Since it is generally only employees not members of the majority organization who desire separate representation on grievance matters, the distinction would appear to be of little practical significance.

[58] See also pp. 83–85.

> not apply just as it reads, where the individual may in person or by counsel of his own choosing or other representative, prosecute his grievances.

Nothing further appears as to the amendment which Mr. Eastman indicated he would work out on this point, or that which Mr. Harrison proposed. But Mr. Harrison's language itself shows that the amendment was intended to be clarifying. The House Committee Report (No. 1944, 73d Cong., 2d Sess.) states (p. 2) that election machinery is provided—

> * * * to determine what representatives the employees desire to have negotiate for them with managements of the carriers in *matters affecting their wages and working conditions.* [Italics supplied.]

In view of the absence of any opposition to the position taken by Mr. Harrison and Mr. Eastman, we think it more reasonable to infer that the amendment was regarded as unnecessary than that the failure to incorporate it in the statute was intended as a rejection of its policy.

As the record in the *Southern Pacific* case shows, both the National Mediation Board (S. P. R. 216–218) and an emergency board created to deal with a related problem on the Southern Pacific Railroad (S. P. R. 726, 736–737) have interpreted the Act as not giving the majority representative exclusive rights to represent members of the craft in the

handling of grievances.[59] In the matter of *Delaware, Lackawanna & Western R. Co.*, Nos. M–199 and R–358, decided August 13, 1937, the Mediation Board declared (p. 7):

> After the majority representatives made the agreement for the craft or class, individual employees were given the right to select their representatives for dealing with grievances arising under the agreements and such individual grievances were to [be] adjudicated by the National Railroad Adjustment Board, which was given the authority to interpret the agreements made and apply the interpretation to the individual grievances of employees.

The Act has also been so applied in practice by the firemen and the engineers throughout the country (S. P. R. 165, 205–208, 234–235). This administrative and practical interpretation of the law is entitled to weight.

These conclusions are reinforced by contemporaneous expressions of administrative and legislative opinion outside the railroad field. Section 7 (a) of the National Industrial Recovery Act,

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[59] The letter from the Mediation Board and the award of the Emergency Board both went so far as to hold that the Act *prohibited* a contract between the majority representative and the carrier giving the former exclusive representation rights in grievance matters. In this case it is not necessary to go that far, and the Mediation Board at present is in accord with the views expressed in the Attorney General's opinion of December 29, 1942. See page 80, *infra*.

adopted June 16, 1933, provided that every code of fair competition should recognize the right of employees to "bargain collectively through representatives of their own choosing" (48 Stat. 198). During the first year of the administration of that Act, there was considerable difference of opinion as to the rights which this provision gave the majority of a bargaining unit.[60]

In the spring of 1934 Senator Wagner introduced the forerunner of the National Labor Relations Act (S. 2926, 73d Cong., 2d Sess.). The bill, as reported out of the Senate Committee, contained a provision for majority rule when the Board so decided, with the proviso that "nothing in this Act shall be construed to prohibit an employer from discussing grievances with an employee or groups of employees at any time." (Sec. 10 (a)). The Senate Committee report (No. 1184, p. 8) stated in respect to this provision:

> Although the representatives of the majority may make the agreement for that unit, the minority have a right *through representatives or otherwise* to present grievances to their employer. [Italics supplied.]

[60] The principle of majority rule was apparently recognized by the National Labor Board but not by General Johnson and General Counsel Richberg of the National Industrial Recovery Administration. For a discussion of the problem during this period, see Lorwin and Wubnig, *Labor Relations Boards* (Brookings Institution, 1935), pp. 109–113, 268–272.

This report was submitted on May 26, 1934.[41]

The proposed bill was not passed. In its stead Congress enacted Public Resolution No. 44 (48 Stat. 1183) which authorized the President to establish boards to decide controversies under Section 7 (a). The resolution was approved by the President on June 19, 1934, two days before he approved the Railway Labor Act amendments. The text of the Resolution throws no light upon the problem; but on June 28, a week after he signed the Railway Labor Act, the President created the National Steel Labor Relations Board (Executive Order 6751). Section 3 of this Order authorized the Board to hold elections to determine representation, and then provided—

> * * * After each such election the Board shall certify the results to all concerned, and the person, persons, or organization certified as the choice of the majority of those voting shall be accepted as the representative or representatives of said employees for the purpose of collective bargaining, *without thereby denying to any individual employee or group of employees the right to present grievances,* to confer with their employers, *or otherwise to associate themselves and act for mutual aid or protection.* [Italics supplied.]

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[41] The committee reports on the Railway Labor Act (S. Rep. 1065, H. Rep. 1944, 73d Cong., 2d Sess.) were submitted on May 21 and June 11, 1934, respectively.

This Order would seem to have reserved to individuals and minorities the right to present grievances apart from the majority representative.[62]

The Order establishing the first National Labor Relations Board[63] issued on June 29, 1934, contained no such provision (Executive Order No. 6763). But in its leading decision on the question of majority rule, *In the Matter of Houde Engineering Corp.*, National Labor Relations Board Decisions, July 19, 1934–June 16, 1935, p. 35, decided August 30, 1934, the Labor Relations Board relied upon and quoted Principle 15 of the old Railway Labor Board (p. 41), and also referred to the Railway Labor Act Amendments passed shortly before (p. 43). Of even more significance, however, was its approval of the limitation upon the doctrine as set forth in the Executive Order creating the Steel Labor Board. The Board stated in this connection (*ibid.*):

> In concluding this opinion the Board wishes to indicate the limits beyond which it does not go. The rule here announced is to be applied, in the language of the

[62] Executive Order No. 6858, September 26, 1934, creating the Textile Labor Relations Board, contained identical language. See to the same effect the Order of the Administrator of the Petroleum Code, dated March 8, 1935, defining the functions of the Petroleum Labor Policy Board (printed in United States Department of the Interior, *Decisions of the Petroleum Labor Policy Board*, pp. ix–x).

[63] This Board was the predecessor to the present Board.

> Executive Order of June 28 just referred to, "without denying to any employee or groups of employees the right to present grievances, to confer with their employers, or to associate themselves and act for mutual aid or protection."

The same principles were applied by the Petroleum Labor Policy Board created by the Administrator of the Petroleum Code; its concluding report to the Petroleum Administrator stated:[64]

> * * * the principle was laid down that a majority of any craft or class of employees shall have the right to determine who shall be the representative of that class or craft for collective bargaining. While developing this principle, at the same time the Board has recognized the rights of individuals or groups to represent themselves or be represented by counsel or other representatives in cases of grievances or other matters not affecting the collective bargain for the whole class or craft of employees.

The clearly expressed views of legislators, of the President in the orders creating the industry labor boards, and of the Boards themselves would seem to manifest a general legislative and administrative understanding contemporaneous with the passage of

[64] See United States Department of the Interior, Petroleum Labor Policy Board, *Report to the Petroleum Administrator*, dated August 17, 1935 (mimeographed).

the Railway Labor Act amendments[55] that the right of the majority to select an exclusive representative for collective bargaining did not ex-

[55] The National Labor Relations Act was enacted July 5, 1935, a year later. 49 Stat. 449 (29 U. S. C., § 151). As originally introduced in both the House and Senate (H. R. 6288, S. 1958, 74th Cong., 1st Sess.), Section 9 (a), which defines the rights of the representative designated by the majority, contained a proviso that "any individual employee or group of employees shall have the right at any time to present grievances to their employer *through representatives of their own choosing.*" The italicized phrase was criticized by the chairman of the committee on the ground that it would permit the employer to "build up another company union" (Hearings, House Committee on Labor, 74th Cong., 1st Sess., H. R. 6288, p. 301), and was deleted from the bill as reported out of committee (S. 1958, draft of May 2, 1935) and as finally passed. See 79 Cong. Rec. 7651. The proviso as it now reads would seem only to permit individual employees or a group of employees to present grievances in person, but not through any other representative than that selected by the majority of the bargaining unit.

The majority rule provision of the National Labor Relations Act conforms of course with principles recognized by the present Labor Board's predecessors, as well as by the Railway Labor Act itself (H. Rep. No. 1147, 74th Cong., 1st Sess., pp. 3, 20–22). On this particular point, however, it would appear that the deletion made by the committee resulted in a departure from the previous experience. Inasmuch as employer interference with the employees' choice of representatives was more widespread in the industries reached by the National Labor Relations Act than on the railroads, it was not inappropriate for Congress to make doubly sure in the Labor Relations Act that the grievance clause contained no loophole for employers to break down collective bargaining through majority representation, irrespective of the effect upon individual employees.

tend to the choice of representatives for the presentation of grievances. We think that in this environment exceedingly clear and unambiguous statutory language or legislative history would be necessary to show that the Congress which enacted the Railway Labor Act had an intention, with respect to the method of handling grievances, inconsistent with the climate of opinion expressed in the contemporaneous labor legislation and regulations. In view of the explanations given before the House Committee and the ambiguity of the Act's provisions, we do not think it can be said that the language of the Act compels that it be given any such inconsistent construction.

Although the right of individuals and minority groups to present grievances through whomsoever they choose was thus recognized, both the Act and the historic material we have outlined shows that collective bargaining was to be accomplished through the majority representative. The concept of collective bargaining includes the maintenance and operation, as well as the making, of agreements (see pp. 59–60, *supra*), and thus would seem to reach the determination of grievances as to involving the interpretation and application of the collective agreement. We do not read the various expressions as to the rights of individuals or groups to present grievances *through* whomever they select as incompatible with the submission of grievances affecting the entire craft *to* the employer and the craft rep-

resentative jointly.[66] With this limitation, we believe that the Act must be construed as not depriving individuals or minorities of their right to choose their representatives to present grievances. If Article 51 of the Firemen's Agreement is so interpreted, it would appear to be valid.

An additional word is called for because of a recent opinion of the Attorney General holding that the Railway Labor Act does not prohibit an agreement between a carrier and the representative selected by the majority of a craft under which the latter will have the exclusive right to act as representative of members of the craft in the handling of grievances.[67] Although the Act does not prohibit such an agreement,[68] it does not impose the requirement as a matter of law. The Act, in other

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[66] This does not mean that all grievances presented by individuals must be submitted to joint conferences of carrier and craft representatives. Any arrangement, formal or informal, whereby such representatives consult each other on the matter should be satisfactory.

[67] Op. A. G., Vol. 40, Opinion 59, dated December 29, 1942. The opinion states that an individual cannot be deprived of the right to present his grievances personally, but that he can be restricted to the use of the organization holding the agreement as his representative.

[68] The letter from the National Mediation Board set forth in the Record (S. P. R. 217–218), the decision of the Emergency Board (S. P. R. 726), and some language in the opinion of the circuit court of appeals in the *Southern Pacific* case (S. P. R. 801–815) express the view that the Act would invalidate such an agreement. Although aware of these pronouncements, the Attorney General was unable to agree with them.

words, leaves the parties where it finds them on this question. Since the agreement between the Engineers and the carrier in this case contains no such provision, the case presents only the issue whether the Act itself gives the majority representative the exclusive right to handle grievances. For the reasons previously set forth, we believe that it does not.

CONCLUSION

It is respectfully submitted that the judgment in the *M-K-T* case (No. 23) should be reversed, and that the judgment in the *Southern Pacific* case (Nos. 27 and 41) should be affirmed.

CHARLES FAHY,
Solicitor General.

ROBERT L. STERN,
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APPENDIX

THE RAILWAY LABOR ACT

Being An Act To provide for the prompt disposition of disputes between carriers and their employees and for other purposes

(U. S. Code, Title 45, Chapter 8)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I[1]

DEFINITIONS

SECTION 1. When used in this Act and for the purposes of this Act—

First. The term "carrier" includes any express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such "carrier": *Provided, however*, That the term "carrier" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso.

Second. The term "Adjustment Board" means the National Railroad Adjustment Board created by this Act.

Third. The term "Mediation Board" means the National Mediation Board created by this Act.

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[1] (Public, No. 257, 69th Cong.) (H. R. 9463); (Approved May 20, 1926). The Railway Labor Act (44 Stat. L. 577).
(Public, No. 442, 73rd Cong.) (H. R. 9861). An Act to amend the Railway Labor Act approved May 20, 1926. (Approved June 21, 1934.)
That Section 1 of the Railway Labor Act is amended to read as follows: (Followed by text governing carriers by railroad and related transportation agencies.). (48 Stat. L. 926.)

[2] Title II. (Public, No. 487, 74th Cong.) (S. 2496). An Act to amend the Railway Labor Act. (Approved Apr. 10, 1936.)
That the Railway Labor Act, approved May 20, 1926, as amended, herein referred to as "Title I" is hereby further amended by inserting after the enacting clause the caption "Title I" and by adding the following Title II. (Followed by Title II governing air carriers.) (48 Stat. L. 1185.)

Fourth. The term "commerce" means commerce among the several States or between any State, Territory, or the District of Columbia and any foreign nation, or between any Territory or the District of Columbia and any State, or between any Territory and any other Territory, or between any Territory and the District of Columbia, or within any Territory or the District of Columbia, or between points in the same State but through any other State of any Territory or the District of Columbia, or any foreign nation.

Fifth. The term "employee" as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders: *Provided, however*, That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission.

Sixth. The term "representative" means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

Seventh. The term "district court" includes the Supreme Court of the District of Columbia; and the term "circuit court of appeals" includes the Court of Appeals of the District of Columbia.

This Act may be cited as the "Railway Labor Act."

SEC. 2. Section 2 of the Railway Labor Act is amended to read as follows:

"GENERAL PURPOSES

"(1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

"GENERAL DUTIES

"First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to

commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

"Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

"Third. Representatives, for the purposes of this Act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this Act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

"Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: *Provided*, That nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

"Fifth. No carrier, its officers, or agents shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization; and if any such contracts has been enforced prior to the effective date of this Act, then such carrier shall notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way.

"Sixth. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on

the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: *Provided*, (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: *And provided further*, That nothing in this Act shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

"Seventh. No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act.

"Eighth. Every carrier shall notify its employees by printed notices in such form and posted at such times and places as shall be specified by the Mediation Board that all disputes between the carrier and its employees will be handled in accordance with the requirements of this Act, and in such notices there shall be printed verbatim, in large type, the third, fourth, and fifth paragraphs of this section. The provisions of said paragraphs are hereby made a part of the contract of employment between the carrier and each employee, and shall be held binding upon the parties, regardless of any other express or implied agreements between them.

"Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

"Tenth. The willful failure or refusal of any carrier, its officers, or agents to comply with the terms of the third, fourth, fifth, seventh, or eighth paragraph of this section shall be a misdemeanor, and upon

conviction thereof the carrier, officer, or agent offending shall be subject to a fine of not less than $1,000 nor more than $20,000 or imprisonment for not more than six months, or both fine and imprisonment, for each offense, and each day during which such carrier, officer, or agent shall willfully fail or refuse to comply with the terms of the said paragraphs of this section shall constitute a separate offense. It shall be the duty of any district attorney of the United States to whom any duly designated representative of a carrier's employees may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States, all necessary proceedings for the enforcement of the provisions of this section, and for the punishment of all violations thereof and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States: *Provided*, That nothing in this Act shall be construed to require an individual employee to render labor or service without his consent; nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent."

SEC. 3. Section 3 of the Railway Labor Act is amended to read as follows:

"NATIONAL BOARD OF ADJUSTMENT—GRIEVANCES—INTERPRETATION OF AGREEMENTS

"SEC. 3. First. There is hereby established a Board, to be known as the 'National Railroad Adjustment Board', the members of which shall be selected within thirty days after approval of this Act, and it is hereby provided—

"(a) That the said Adjustment Board shall consist of thirty-six members, eighteen of whom shall be selected by the carriers and eighteen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of section 2 of this Act.

"(b) The carriers, acting each through its board of directors or its receiver or receivers, trustee or trustees, or through an officer or officers designated for that purpose by such board, trustee or trustees, or receiver or receivers, shall prescribe the rules under which its representatives shall be selected and shall select the representatives of the carriers on the Adjustment Board and designate the division on which each such representative shall serve, but no carrier or system of carriers shall have more than one representative on any division of the Board.

"(c) The national labor organizations as defined in paragraph (a) of this section, acting each through the chief executive or other medium designated by the organization or association thereof, shall prescribe the rules under which the labor members of the Adjustment Board shall be selected and shall select such members and designate the division on which each member shall serve; but no labor organization shall have more than one representative on any division of the Board.